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No. (1)

Supreme Court, U.S.
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In The
Supreme Court of the United States

KEVIN G. CHESNEY and
LORRAINE CHESNEY, ux.,

Petitioners,

v.

VALLEY STREAM UNION FREE
SCHOOL DISTRICT NO. 24, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1.

Does federal appellate court clerk and court personnel's extreme, systemic docket and order tampering, both on paper and on the Internet PACER system and its complete destruction of the court file – all within its control – coupled with the failure of Respondent to participate at the appellate level, make that clerk and personnel personally liable for the complete denial of due process to petitioner under the doctrine of qualified immunity where they are not performing functions at the direction of judges, and where their proven and uncontroverted conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known? *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

2.

Does federal appellate court clerk and court personnel's extreme, systemic docket and order tampering, both on paper and on the Internet PACER system and its complete destruction of the court file – all within its control – coupled with the failure of Respondent to participate at the appellate level, so shock the conscience as to require this Court's immediate intervention and formulation of objective standards as to afford a remedy for Petitioners and maintain "public confidence in the Nation's judicial system. . . ." *Caperton v. Massey Coal Co., Inc.*, 556 U.S. 1, 17, 129 S. Ct. 2252, 2274 (2009) (5-4 decision) (Scalia, J., dissenting).

PARTIES TO THE PROCEEDING

VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24; VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24 BOARD OF EDUCATION; JOSEPH CONRAD, PRESIDENT; CAROLE MEANEY, VICE PRESIDENT; HENRIETA CARBONARO, PAUL DEPACE, ANTHONY IADEVAIO, FRANK NAURA, and LAWRENCE TROGEL; Each in its individual and official capacity; EDWARD M. FALE, PHD., SUPERINTENDENT OF SCHOOLS, In his Individual and official capacity; LISA K. CONTE, PRINCIPAL; CHARLES BROCEAUR, MAINTENANCE SUPERVISOR, in his individual and official capacity; STEPHEN HARAMIS, CUSTODIAN AND UNION REPRESENTATIVE, LOCAL 74 SEIU.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Kevin G. Chesney and Lorraine Chesney, ux., respectfully submit this petition for writ of certiorari to review the fake "Order" dated May 5, 2010, which was not certified, mandated or sent to the trial court by the Circuit Court, the purported record on appeal, as well as the dockets leading up to the May 5, 2010 "Order."

OPINION BELOW

There are no opinions below. There was zero due process below.

JURISDICTION

The Second Circuit Clerk issued a document titled "Order" stating it was "filed" May 5, 2010, purporting it to have been "entered" on May 5, 2010, and a "Mandate" of the "Order" purporting to have been "issued" on "06/10/10." The "Mandate" is claimed to have been "certified," but is not. It is designated "a true copy" only. The "Mandate" is claimed to be "disposing of the appeal issued to district court." This is false. There is no certified order or mandate. This Court has jurisdiction under Article III of the United

States Constitution, 28 U.S.C. §§ 1254(1) and (2), 28 U.S.C. §§ 1734 and 1735, FED. R. APP. P. § 4(a)(1)(A).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

SUP. CT. R. 10 and 11; 28 U.S.C. §§ 1734 and 1735, FED. R. APP. P. §§ 4(a)(1)(A), 41, 45, 45.1, the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501, et seq.) Public Access Court Electronic Records (PACER) at http://pacer.psc.uscourts.gov, CM/ECF and CONST. amend. XIV, § 1, which provides, in relevant part:

> No State shall . . . deprive any person of life, liberty or property, without due process of law. . . .

Paperwork Reduction Act § 3501 provides in relevant part:

> The purposes of this subchapter are to –
>
> (1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;
>
> (2) ensure the greatest possible public health benefit from and maximize the

utility of information created, collected maintained, used, shared and disseminated by or for Federal Government;

(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices and policies as a means to improve the productivity, efficiency, and effectiveness of Government programs, including reduction of information collection burdens on the public and the improvement of delivery to the public;

(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

(6) strengthen the partnership between the Federal Government and the State, local and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated and retained by or for the Federal Government;

(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to

the public and makes effective use of information technology;

(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to –

(A) privacy and confidentiality, including section 552a of title 5

(B) security of information, including the Computer Security Act of 1987 (Public Law 100-235); and

(C) access to information, including section 552 of title 5;

(9) ensure the integrity, quality, and utility of the Federal statistical system;

(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this subchapter.

28 U.S.C. § 1734 Court Record Lost or Destroyed Generally provides as follows:

> (a) A lost or destroyed record of any proceeding in any court of the United States may be supplied on application of any interested party not at fault, by substituting a copy certified by the clerk of any court in which an authentic copy is lodged.
>
> (b) Where a certified copy is not available, any interested person not at fault may file in such court a verified application for an order establishing the lost or destroyed record. Every other interested person shall be served personally with a copy of the application and with notice of hearing on a day stated, not less than sixty days after service. Service may be made on any nonresident of the district anywhere within the jurisdiction of the United States or in any foreign country. Proof of service in a foreign country shall be certified by a minister or consul of the United States in such country, under his official seal. If, after the hearing, the court is satisfied that the statements contained in the application are true, it shall enter an Order reciting the substance and effect of the lost or destroyed record. Such Order, subject to intervening rights of third persons, shall have the same effect as the original record.

Sec. 1735. Court record lost or destroyed where United States interested provides as follows:

> (b) Whenever the United States is interested in any lost or destroyed records or files of a court of the United States, the clerk of such court and the United States attorney for the district *shall* take the steps necessary to *restore* such records or files, under the direction of the judges of such court.

Emphasis added.

SUP. CT. R. 10 provides in part:

> (a) above . . . below a United States court of appeals has entered a decision . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power
>
> * * *
>
> (c) . . . a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

SUP. CT. R. 11. Certiorari to a United States Court of Appeals before Judgment

> A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing

that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. *See also* 28 U.S.C. § 2101(e).

SUP. CT. R. 12.7 provides:

> 7. The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it. In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court. When requested by the Clerk of this Court to certify and transmit the record, or any part of it, the clerk of the court having possession of the record shall number the documents to be certified and shall transmit therewith a numbered list specifically identifying each document transmitted. If the record, or stipulated portions, have been printed for the use of the court below, that printed record, plus the proceedings in the court below, may be certified as the record unless one of the parties or the Clerk of this Court requests otherwise. The record may consist of certified copies, but if the lower court is of the view that original documents of any kind should be seen by this Court, that court may provide by order for the transport, safekeeping, and return of such originals.

STATEMENT OF THE CASE

A. Preamble

This first impression case presents issues that have serious, immediate national and international judicial importance and precedent. Petitioners' case was, in effect, litigated inside the Circuit courthouse by the Chief Clerk, as well as her various attorneys, clerks and case managers for the defaulting Respondent school district and school board ("Respondent") for sixteen (16) months. Not a single judgment, order or decree exists which may be reviewed in the normal course. This honorable Court is asked to examine – we respectfully decline to use the word "review" – and remedy a collision between the convenient, high speed cyber technology system devised by Congress, that is, PACER, and the systemic due process deprivation that resulted from the miss-use of this modern system by court personnel and third parties to subvert the positive intent of the system. PACER is paid for privately by its users and funded by federal, public tax monies. Petitioners believe that the extreme nature of the documentary evidence provided in the Appendix herein provides a casebook study, if not a microcosm of the ongoing destruction of the fabric of this nation's judicial system as the final arbiter of the rights of the citizenry and all those who come to the courts for preservation of its most sacred constitutional rights. We believe that the malfeasance in this case is by no means isolated. We surmise that it is the worst

example of the total deprivation of due process seen in the history of American courts.

In late 1776, New York attorney John Jay reminded the people of New York that "you and all men are created free, and . . . it is therefore . . . the duty of every man, to oppose and repel all those, by whatever name or title distinguished, who prostitute the powers of Government to destroy the happiness and freedom of the people over whom they may be appointed to rule." Hershkowitz and Klein, ed., *Courts and Law in Early New York, Selected Essays* 100 (National University Publications, KenniKat Press 1978).

Justice Scalia recently reminded us that "the principal purpose of this Court's jurisdiction is to clarify the law." *Caperton v. Massey Coal Co., Inc.*, 556 U.S. 1, 17, 129 S. Ct. 2252, 2274 (2009). This Court's central mission has always been to preserve the integrity of the judicial system and society's reliance on the system. Today, more than any other time in our history, society means the United States of America as well as all people of the planet. This Court's concern, at time of war, to preserve constitutional privileges and afford them to even enemy combatants was echoed recently in its opinion that stated

> "[i]n considering both the procedural and substantive standards used to impose detention to prevent acts of terrorism, the courts must accord proper deference to the political

> branches. However, security subsists, too, in fidelity to freedom's first principles, chief among them being freedom from arbitrary and unlawful restraint and the personal liberty that is secured by adherence to the separation of powers."

Boumediene v. Bush, 553 U.S. 723 (2008). *See also, United States v. Al-Moayad,* 545 F.3d 139 (2d Cir. 2008), wherein case of accused terrorists was reversed and remanded for new trial before new judge due to serious errors at trial.

Petitioners and their counsel are each disabled American citizens and not alleged terrorists. Nevertheless, their case, which traversed the same courts simultaneously with the above "terrorist" cases, never received any of the constitutionally guaranteed due process afforded the alleged terrorists.

B. Eastern District of New York Proceedings

On June 30, 2004, the Valley Stream Union Free School District No. 24 ("District") unlawfully terminated Kevin G. Chesney ("Chesney") a full-time, thirty-four-year-old, newlywed male cleaner/custodian, following his serious back injury sustained at work on May 17, 2004. The termination occurred less than twenty-four (24) hours before he was eligible to receive his vacation, sick and personal days earned the previous year as a full time worker.

Chesney and his wife filed a summons and complaint in the New York State Supreme Court of Nassau County, alleging, inter alia, unlawful termination as a result of his injury and disability under N.Y. EXEC. L. § 296 (McKinneys 2010). The District falsely claimed in official papers submitted to health providers that Petitioners had been injured in an "automobile accident." District Respondents immediately removed Petitioners' complaint to Eastern District of New York, Central Islip, New York. Petitioners applied for worker's compensation and was eventually awarded 85% permanent partial disability by a judge and board panel. As a result of lengthy and frivolous appeals by the school district of Petitioner Chesney's Worker's Compensation Orders, Petitioner's emergency spinal surgery was delayed for two years, resulting in a permanent disability finding as of age 40, some six (6) years later. The delay caused by these appeals delayed surgical intervention for so long that Petitioner's injury was exacerbated.

1. Ex Parte Communication Between Court and Defense Counsel

Defense counsel was recorded on transcripts actively engaging in ex parte coaching sessions with the Magistrate Judge as to the merits of the case and how to defeat Petitioners, all in the absence of Petitioners' counsel, even as an adjournment was placed on the docket on two occasions. The transcripts, ordered, paid for and obtained by Petitioners on July 13, 2009, were never filed timely on PACER and thus

were not made a part of the proper record on appeal. However, they were fraudulently entered one year later in 2010 on the District Court PACER docket and marked "entered" as of July 13, 2009. This is an egregious fraud upon this Court and the Circuit Court.

2. Discovery of Complete Destruction of District Court Case Records, Evidence and Extensive Tampering of ECF Docket

In July 2009, Petitioners discovered the complete destruction and spoliation of their case file in the EDNY Clerk's Office after their case was unlawfully dismissed and a judgment entered by the Chief Clerk of the Court, in the tampered electronic docket. That Order and Judgment was immediately appealed by Petitioners. App. 15-17, 48 Petitioners timely filed four (4) detailed notices of appeal that included the dismissal by summary judgment of the COBRA/ERISA claim and the dismissal of Petitioners' amended complaint which, as granted by the trial court, included three additional causes of action, to wit: Americans With Disabilities Act of 1990 and its New York counterpart; Section 504 of the Rehabilitation Act of 1973; fraud and tampering. App. 45-50 The stated basis for the "dismissal" Order was the court's unexplained alleged "absence" of Petitioners' papers which were to have been filed with the court by the school district electronically via ECF and hard (paper) copy under the Bundle Rule and were not. App. 17 To date, defense counsel has never denied Petitioners' claims and proof of fraud and tampering

or the complete destruction of the court files in either court.

Also noteworthy is the fact that, due to the destruction of the trial court's case file, this claim of "absent" papers in the court file could no longer be disputed by Petitioners in an appeal.

Petitioners were completely deprived of the right to litigate and conduct any discovery in the case in contravention of settled law in the Second Circuit per FED. R. CIV. P. § 8 and *Wynder v. McMahon*, 360 F.3d 73 (2d Cir. 2004). Neither the District nor Circuit Court ever reached the merits of the case.

Recently, in *Isasi v. Heinemann and Wolfe*, the Eastern District Court justified the dismissal of a pro se criminal litigant's action under 42 U.S.C. § 1983 on the basis that defendant clerks failed to "administratively process certain documents." 2009 U.S. Dist. LEXIS 4392. Upon the November 1, 2005 removal of Petitioners' case from state court, the case was unlawfully marked as "ineligible for arbitration." ECF 11/3/2005. Then the magistrate immediately and inexplicably stayed all discovery in the case and repeatedly adjourned the "initial conference" for two years to January 26, 2007, while Respondent school district and its counsels, two (2) law firms – four (4) defense firms were involved in all of the litigation – moved for summary judgment dismissal by submitting proven false and perjured affidavits, tampered and forged time sheets, and false, perjured and fabricated COBRA notification and claim forms.

Early in the case, Petitioner complained to the Court of the larceny of his paycheck and time due him as well as the perjured materials, to no avail. Petitioners through counsel demanded that the Court grant an immediate forensic evaluation of the forged time records and COBRA forms relied on by Respondent Valley Stream school officials to commit a fraud upon that court. That demand was ignored.

In an effort to obtain some discovery, Petitioners submitted detailed FOIA requests to Respondent Valley Stream in 2008 and 2009 seeking a forensic examination of all original documents and evidence submitted to the district court, only to have nothing responsive produced by Respondent.

C. Circuit Court Proceedings

1. Petitioners Could Not Advance An Appeal in the Absence of Any Elements of An Appeal or Any True Proceedings in the Circuit Court

Because, as a threshold matter, Petitioners' entire original district court case file was discovered destroyed in toto as of at least July 10, 2009, Petitioners were unable to proceed with an appeal. App. 12-14 According to the District Court PACER Docket, the record on appeal was due to be sent and filed in the Second Circuit Court of Appeals on July 31, 2009. It was never sent or docketed and has not been sent or docketed to date. App. 49-50 According to the Second Circuit Court of Appeals General Docket,

"Original documents remain in the originating court." This verbiage appears on that docket a total of six (6) times. Upon learning of the court file destruction, Petitioners moved by Form T-1080 for an order to sequester the court file of EDNY on July 29, 2009 (affidavits and exhibits omitted). App. 69-71 Despite both court's having been placed on notice of the court's destroyed files and tampered PACER docket, the Circuit issued a fake order "staying" the appeal, allegedly pending the EDNY's decision as to Petitioners' motion for reconsideration. This fake Order, dated August 20, 2009, was never on a calendar, never before the panel named on the order, and was signed by Supervisory Staff Attorney Michael Zachary, whose name is not on the Circuit Court Docket where the fake Order is entered. App. 10-11 Mr. Zachary issued a second fake Order five days later on August 25, 2009, and that fake Order was not docketed or timely received by counsel for Petitioners. The impossibility of deciding any motion in the face of a destroyed original case file and tampered docket was never addressed or explained in these proven fake Orders and has not been to date.

2. Principle: Impossibilium nulla obligatio est. One cannot be obliged to perform impossible tasks.

Petitioners sought a stay of their appeal due to the destruction of the Eastern District Court's original case file and the extensive, unlawful tampering

and destruction of the case's electronic "ECF" docket on PACER. The stay and related relief was denied in another fake "Order" never seen or issued by a judge. App. 5-6 In fact, fake, clerk-issued orders denied all of Petitioners' seven (7) Form T-1080 motions seeking "Emergency" relief for, inter alia, an Order a) sequestering the district court file, b) institution of a criminal investigation into the file destruction and docket tampering, c) turnover of original school COBRA and payroll records, d) a forensic analysis of school records requested, e) immediate stay of appeal pending criminal investigation into docket fraud, file destruction and conference with judges, and f) stay of appeal pending "resolution of [Petitioners'] anticipated writs of certiorari, mandamus to the United States Supreme Court, based on impossibility of briefing within appeal due to destroyed record and fraudulent Order signed by Operation's Analyst Franklin Perez for RCW," and g) a default judgment due to proven tampering, destruction and fake Orders. App. 69-92

This case is unique and shocks the conscience for its total lack of due process under FED. R. CIV. P. at the trial court level and under FED. R. APP. P. at the appellate level. The Second Circuit failed to afford Petitioners with due process in multiple ways in that there were:

1) no docketed, annotated, certified Record on Appeal; App. 106-120

2) no certified transcripts of district court proceedings; App. 106-120

3) no original lower court documents as stated on the Second Circuit General Docket as published on PACER;

4) no CAMP conference; App. 106-120

5) no briefing schedule or pre-briefing conference; App. 106-120

6) no oral arguments, even though oral argument was formally requested seven (7) times; App. 106-120

7) no panel of judges or single judge, at least twelve (12) different judges' names appeared without their knowledge on fake Orders and on the fake General Docket, but no judge or panel of judges ever heard the case or met with the parties; App. 106-120

8) no appearance of this case or any of its seven (7) T-1080 motions by Petitioners appeared on any approved calendars maintained by the Clerk of the Court; App. 93-105

9) no judge's signature on any documents or purported orders of the Court;

10) no valid orders were issued; in fact, all motions by Petitioners were falsely claimed to have been "sua sponte" denied by the Court, even though none were ever calendared or seen by a judge or a panel of judges as required by FED. R. APP. P; App. 10 a fake "Order" dated, filed by stamp of January 07, 2010 is falsely docketed on the General Docket as

"entered" on January 8, 2010, signed by "Operations Analyst Franklin Perez for Judge Richard C. Wesley (RCW by FP)." App. 7-9 The fake order, miss-mailed to an incorrect address late and post marked four (4) days later to Petitioners' legal counsel Pollack, contains three sitting judges' names all in contravention of FED. R. APP. P. § 25(a)(2)(B)(ii). Hence, there never was a briefing "Order" or a "certified" and "mandated" "Order" dismissing (disposing of) this phantom appeal. App. 1-4

11) No judges present on any calendars. According to the Court's Approved Calendar for the Week of January 4 through January 8, 2010 in the Ceremonial Courtroom (9th Floor), none of the named judges on the fake "order" were "Present" on the date or week indicated. The instant case did not appear on this week's "approved" calendar. None of the fake orders in the instant case appeared on any of the Court's corresponding calendars. App. 93-105 Mr. Perez also appears in other cases as "Deputy Clerk Frank Perez." *cf.* App. 7-9

12) Staff attorneys with no authority to do so, signed fake Orders and issued them late under unknowing judges' names and failed to docket the fake Orders.

13) No opposition or lawful participation by pro se Respondent – Respondent school

district from April 29, 2009 to date – the duration of the case in the Circuit – resulting in a total default by the school district, a fact never acknowledged by the District Court, Circuit Court or Clerk;

14) Circuit Clerk abducted Petitioners' case in that she acted as attorney and counsel on behalf of the defaulting school district in violation of FED. R. APP. P. §§ 45 and 45.1. [Clerk's Duties]

15) Purported Order dated May 5, 2010 that "disposed" of this phantom "appeal" was not seen by any judge or panel of judges, not calendared or entered onto the Court docket, but is purportedly "mandated" on June 10, 2010 and not "docketed" until June 24, 2010. This fake Order was not mandated or sent to and docketed by the district court. App. 1-4, 121

16) No true case manager on the case. The docket reflects at least twelve (12) different "case managers" from several different departments of the Court. App. 106-120

REASONS THIS PETITION SHOULD BE GRANTED

In sum, the facts of this case constitute fraud, tampering and the abducting of this phantom appeal so that it is a phantom in the Second Circuit. The case has been so deeply and carefully abducted from view

that it cannot be located on the Second Circuit Search Engine, LEXIS-NEXIS®, WESTLAW®, FINDLAW®. PACER CASE LOCATOR, Second Circuit Home Web Page, www.ca2.uscourts.gov/decisions, Cornell University Legal Information Institute U.S. Circuit Court Opinions Search, or any other publically viewable search engine. App. 146-154 The acts and omissions committed in furtherance of the scheme to defeat Petitioners' case on four (4) judicial levels constitute a fraud upon this Court as well. *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), where the Court stated that "Fraud upon the court is fraud which is directed to the judicial machinery itself . . . it is where the court or a member of the court is corrupted or influence is attempted or where the judge has not performed his judicial function, thus where the impartial functions of the court have been directly corrupted." The Seventh Circuit Court of Appeals defined this form of fraud as that which "attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented 'for adjudication.'" *Kenner v. C.I.R.* 387 F.2d 689, 691 (7th Cir. 1968). The Court further stated that "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." *Id.* Fraud upon the court makes void the orders and judgments of that court. *In re Village of Willowbrook*, 37 Ill.App.2d 393 (1962) "It is axiomatic that fraud vitiates everything."

A. E-Spoliation and Sanctions Today

The Second Circuit has itself ruled on spoliation in past cases that pale in comparison to this case. "Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999) (citation omitted). A party bringing a spoliation claim must demonstrate

> (1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed;
>
> (2) that the [evidence was] destroyed with a culpable state of mind; and
>
> (3) that the destroyed evidence was relevant to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

Residential Funding Corp. v. DeGeorge Fin. Corp., 306 F.3d 99, 107 (2d Cir. 2002) (internal quotation marks and citation omitted).

In *Gutman v. Klein*, Magistrate Judge Robert M. Levy determined that defendant searched for and downloaded software to erase its hard drive of evidence relevant to the case. 03-Civ. 1570 (BMC), 2008 WL 5084182 (E.D.N.Y.) (Dec. 2, 2008) approving Report and Recommendation, 2008 WL 4682208 (Oct. 15, 2008). Instead of using the data "wiping" software, Respondent manually deleted files and reinstalled

Windows XP, ostensibly to cover-up the erasing of evidence. The Court ordered a forensic examination of the laptop. Much of the spoliation evidence was located by virtue of a forensic analysis of file system meta data, file meta data, and system logs. Based on this spoliation, the magistrate judge recommended a sanction of default judgment against the defendant and a sanction of attorneys fees related to the discovery. The District Court (Cogan, J.) approved the Report and Recommendation of M.J. Levy.

The *Gutman* Court then applied spoliation law:

> In the first prong, a party becomes obligated to preserve evidence when it "has notice that the evidence is relevant to litigation . . . [or] should have known that the evidence may be relevant to future litigation."

Kronisch v. United States, 150 F.3d 112, 126 (2d Cir. 1998) (citations omitted); accord *Fujitsu Ltd. v. Fed. Express Corp.*, 247 F.3d 423, 436 (2d Cir. 2001).

The Court's (and litigants') original case file was destroyed in its entirety in an obvious attempt to obstruct and prevent Petitioners Chesney from perfecting their appeal and proving that their papers were, in fact, timely submitted to the district court months earlier. The proper and timely submission of Petitioners' documents was evidenced by the annotated record on appeal, never sent to or docketed by the Circuit Court of Appeals. A true copy of this annotated record on appeal was retained as evidence by Petitioners as of July 31, 2009. App. 52-68 Petitioners

and their counsel reasonably relied on the district court to retain and preserve their case file and the integrity of the ECF docket at least until the end of any appeals. The same reliance by Petitioners and their counsel would have been expected from Respondent School District and its counsel. However, the silence of Respondent throughout the history of the case to date demonstrated its tacit participation in and benefit from the wholesale destruction of the files and PACER docket.

In the second prong, the Second Circuit has held that negligence is a sufficiently culpable state of mind for spoliation. *See Residential Funding Corp.*, 306 F.3d 99, 108; *see also NTL, Inc. Sec. Litig.*, 244 F.R.D. 179, 197-98 (S.D.N.Y. 2007); *Phoenix Four, Inc. v. Strategic Res. Corp.*, No. 05 Civ. 4837, 2006 WL 1409413, at *4 (S.D.N.Y. May 23, 2006).

Here, negligence, at the very least, is apparent from the wholesale destruction and spoliation of both the case file and the docket itself since 2004. Indeed, it may be inferred that gross negligence and specific intent exists here as well. 18 U.S.C. § 1503 prohibits destruction of tangible evidence to impede a pending judicial action. 18 U.S.C. § 1510 permits criminal prosecution of a person who impedes federal criminal investigations. 18 U.S.C. § 1512(b)(2)(A) permits criminal prosecution of a person who corruptly persuades, or attempts to persuade, another person to withhold testimony or documents from an official proceeding. Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1519 imposes steep fines and up to a 20-year prison

term for anyone found guilty of altering, destroying or falsifying documents in order to impede a federal investigation or official proceeding. It is not necessary to cite here the numerous state statutes which impose criminal punishment for tampering with physical evidence, making it a felony to destroy, mutilate, conceal or alter physical evidence, including documents, with the intent to impair their availability in a pending or official proceeding. *See, e.g.*, FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE in violation of N.Y. PENAL L. § 175.10, COMPUTER TAMPERING IN THE SECOND DEGREE in violation of N.Y. PENAL L. § 156.20 (McKinneys 2010).

The third prong has been established in the instant case, that is, the burden of proving that evidence would have been relevant to a party's claims or defense is proportional to the mens rea of the party who destroyed the evidence. For example, a court may infer relevance when "a party acted in bad faith because 'bad faith alone is sufficient circumstantial evidence from which a reasonable fact finder could conclude that the missing evidence was unfavorable to that party.'" *Phoenix Four, Inc.*, 2006 WL 1409413, at *4 (citing *Residential Funding Corp.*, 306 F.3d 99, 109). In contrast, where the party destroyed evidence due to ordinary negligence, "[t]he burden falls on the 'prejudiced party' to produce 'some evidence suggesting that a document or documents relevant to substantiating his claim would have been included among the destroyed files.'" *Byrnie v. Town of Cromwell, Bd. of Educ.*, 243 F.3d 93, 108 (2d Cir.

2001) (quoting *Kronisch*, 150 F.3d at 128). However, the court should avoid "holding the prejudiced party to too strict a standard of proof regarding the likely contents of the destroyed evidence," as doing so "would subvert the prophylactic and punitive purposes of the [spoliation sanctions]." *Kronisch*, 150 F.3d at 128.

In *Gutman*, the Court found that " . . . the record demonstrates that Klein acted in bad faith when he destroyed evidence on the Klein laptop." *See Phoenix Four, Inc.*, 2006 WL 1409413, at *4 (citing *Residential Funding Corp.*, 306 F.3d at 109); *see also Handwerker v. AT&T Corp.*, 211 F.R.D. 203, 209 (S.D.N.Y. 2002) ("Noncompliance may be deemed willful 'when the court's orders have been clear, when the party has understood them, and when the party's noncompliance is not due to factors beyond the party's control.'") (quoting *Bambu Sales, Inc. v. Ozak Trading Inc.*, 58 F.3d 849, 852-53 (2d Cir. 1995)). In the instant case, the complete destruction of a case file in the Court and the extensive docket tampering and court-involved ex parte communications against Petitioners' interests, coupled with the participation in the ex parte acts and failure to deny participation in the spoliation more than meet the mens rea threshold because it could be construed as an admission of guilt and bad faith referred to by Magistrate Judge Levy.

As in *Gutman*, in the more recent Eastern District of New York case of *ACORN, et al.*, citing most of the applicable cases, the Court only partially granted

Petitioners' letter application seeking extensive sanctions for the County's finding of gross negligence in its own failure to implement a litigation hold, among other discovery abuses. 2009 U.S. Dist. LEXIS 19459.

The *ACORN* and *Gutman* spoliation of evidence abuses pale in comparison to Petitioners' case at bar. Accordingly, while Petitioners and their counsel respectfully claim that they are entitled to a substantial award of damages for this reprehensible act of sabotage, destruction and fraud, all of which is irreparable, they leave the remedy to this honorable Court. To "remand" this case is not to remedy the wrong. Remand implies that there was due process, when, in fact, there was absolutely none.

In addition, the school board members, who were sued individually and continued as Respondent in the underlying cases, themselves have each breached, either benignly or intentionally, their fiduciary obligations to protect the District from further harm. This they did by knowingly permitting the professional misconduct of the District, the Superintendent, its agents, servants and employees, as well as its four (4) firms of legal counsel, the latter of which were paid for five (5) years with public state and federal funds, to continue without being addressed, and not ordered halted or changed. This can be said to render the Board members' fiduciary failure as incontrovertible proof of malicious intent.

The central role of key federal court personnel and chief clerks in the spoliation in this case presents many violations of 28 U.S.C. §§ 1734 and 1735. As such, under the law of e-spoliation, evidence tampering and file destruction, the imposition of damage charges in this case may be raised to the treble degree.

Any discussion of the history of the federal courts system must include the unending struggle of the federal government to balance autonomy of the clerks with supervision of clerks who are charged with safeguarding public funds and records:

> . . . but as the essential role of those clerks as the processors of the court's business, as the fee collectors for the U.S. Treasury, with respect to that business, and as the institutional memory of our common-law based judicial system has remained constant. Moreover, while the clerks are now assisted by a host of specialized deputies, it is the clerks themselves who remain responsible for and ensuring that the pleadings, motions, and other documents submitted to the federal courts are in the proper form for consideration by the judges of those courts, and that those documents, along with the courts' orders and judgments, are stored so that they can become part of the nation's official public record.

I. Scott Messinger, *Order in the Courts: A History of the Federal Court Clerk's Office*, at 73, Federal Judicial Center (2002).

This Court should exercise its extensive federal powers to safeguard and protect the integrity of the federal system in an age of cybertechnology. The Court Clerk is empowered with a number of duties as to internal operating procedures of the circuit courts.

Internal Operating Procedures (IOP) of the Circuit Court

> § 0.19 Process – All process of this court shall be in the name of the President of the United States, and shall be in like form, and tested in the same manner as process of the Supreme Court.

The Clerk violated the IOP in all respects. This Court's review of Petitioners' case is necessary to test the process of the Circuit Court and the Supreme Court.

> § 0.16 Clerk – (c) When it is required that the record be certified to the Supreme Court of the United States, the clerk, if possessed of the original papers, exhibits, and transcripts of proceedings of the district court . . . and a copy of the docket entries of the district court *shall certify and transmit them and the original papers filed in this court*.

Emphasis added.

> FED. R. APP. P. § 45 Clerk's Duties – (1) Qualifications. The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may

> practice as an attorney or counselor in any court while in office.

In the instant case, the Clerk and her deputy clerks violated her oath by acting as counsel and attorneys for Respondent school district, the latter of which failed to participate in or oppose any of Petitioners' seven (7) applications for relief made in the Circuit Court. The school district was pro se at all times in the Circuit from the inception of the appeal to date.

> FED. R. APP. P. § 45(b) Records.
>
> (1) The Docket.
>
> The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.
>
> (2) Calendar.
>
> Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preferences in appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

Contrary to the many fraudulent representations on the General Docket, none of Petitioners' seven (7) applications, including requests for emergency relief, in the instant case were ever calendared or seen by a

single judge or panel of judges. App. 69-92 While the case was deemed in fake Orders both "dismissed" and "disposed," the General Docket of the Circuit Court contained the notation "DISPOSED" from the date of the May 5, 2010 fake "Order" until June 25, 2010, when the Docket states the case is "CLOSED." This is the first date on which the General Docket contains entries as follows:

> 5/21/10 MOTION, for reconsideration, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Jun 2 2010] [AS]
>
> 6/8/10 Notice to counsel re: Order dated 06/08/10. [Entry date Jun 8 2010] [CI]
>
> 6/8/10 ORDER, Denying motion for reconsideration of decision by Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED [Entry date JUN 8 2010] [CI]
>
> 6/10/10 Certified copy of Order dated 5/05/2010 disposing of the appeal issued to district court. [Mandate] [Entry date Jun 10 2010] [AG]
>
> 6/10/10 Notice to counsel in re: Mandate issued. [Entry date Jun 10 2010] [AG]
>
> Docket as of June 24, 2010 3:41 pm Page 12.

Petitioners note that the above entries do not appear on the General Docket at all until June 24, 2010. App. 127-128 This case is riddled with fake

Orders and docket tampering on an unprecedented level. No true appeal can lie in such a case.

FED. R. APP. P. 79(3) Other Records states:

> The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.
>
> (c) Notice of an Order or Judgment.
>
> Upon the entry of an Order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of an opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.
>
> (d) Custody of Records and Papers.
>
> The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review, must be returned to the court . . . from which they were received. The clerk must preserve a copy of any brief, appendix or other paper that has been filed.

The Clerk, deputies and staff involved violated all of their solemn duties to the Circuit Court, this Supreme Court and Petitioners. Certiorari will permit

this Court to use its extensive powers to examine and remedy this unprecedented denial of Petitioners' guaranteed due process of law.

Procedural due process is at its core based on the concept of "fundamental fairness." In 1934, the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." This Court has evidenced a deep and abiding concern for the threat to a Petitioners' Constitutional right to due process under the Fourteenth Amendment. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 1, 129 S. Ct. 2252 (2009). The failure of the Circuit Court to safeguard any of Petitioners' appellate rights led to the complete deprivation of his right to have his Americans with Disabilities Act of 1990 and New York State counterpart/ERISA/COBRA/fraud and tampering/Rehabilitation Act of 1973/unlawful termination claims heard on any level.

The granting of this petition will also permit this Court to examine the role of the appellate courts and the PACER system and remedy abuses of the electronic docket before additional harms occur in this or any other case. This case presents an urgent need for intervention by this honorable, fair and just Court to prevent further travesties from occurring against unknowing litigants in both the civil and criminal system.

The timing of the role of the New York State Comptroller in issuing a scathing audit report against Respondent School District and its Board of Education and the misappropriation of at least $4 million in state and federal public dollars placed in an excess "reserve" fund should be reviewed. Auditors found that this misappropriation constituted more than three times the legal amount permitted and that the District's budgeted expenses "consistently exceeded" amounts needed and was done "deliberately." *See* Valley Stream Union Free School District #24 Internal Controls Over Selected Financial Operations, Audit Report No. 2009M-141, October 2009 at P. 3. and *Newsday* articles "State Audits Critical of 2 Districts," 11/11/2009 P. A 26 Col. 1 (Hildebrand, John) and "Account Overfunded, Audit Says," 1/8/2010. P. A 26 (Tyrrell, Joie). The audit was conducted pursuant to N.Y. CONST. art. V, and the State Comptroller's Authority as set forth in Article 3 of the N.Y. GEN. MUN. L. art. 3 (McKinneys 2010). Petitioners' appeal was filed to the Circuit Court in EDNY on April 28, 2009. The Corrective Action of the Audit was due January 2010.

> FED. R. APP. P. Local Rule 45.1. Clerk's Authority to Issue Orders. The clerk signs and enters, electronically or otherwise, all Orders on behalf of the court.

Certiorari will permit this Court to examine the original record to confirm the fact that all "Orders" are proven products of fraud by the clerk, and none of them were ever seen by or issued by a judge or panel.

FED. R. APP. P. 10 The Record on Appeal.

(a) Composition of the Record on Appeal.

The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

Here, the Circuit Court docket does not contain a single one of the three (3) required items that "constitute" the record on appeal.[1] Second, the docket contains several entries stating that "all original documents remain in the lower court." App. 106-120 Case manager Dyllan Beasley, who was one of twelve (12) assigned to the case, noted on the Circuit docket,

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[1] Petitioners and their counsel promptly reported the docket tampering and file destruction in writing, certified mail to the United States Attorney's Office for the Eastern and Southern Districts of New York, the Chief Clerks of the Eastern District of New York and Second Circuit, the magistrate and judge assigned to the case, all defendants and defense counsel, the Nassau County District Attorney, the New York State Comptroller and Attorney General, and the New York State and federal Grievance Committees, the New York State Judiciary Committee, the FBI, the United States Senate and House Judiciary Committees, PACER, Inc., the United States Department of Justice in Washington, D.C., the Administrative Office of the U.S. Courts, and the United States Office of Court Records (OCR), for mandated action pursuant to 28 U.S.C. §§ 1734 and 1735, to no avail.

after he called the EDNY Court, that "not one element of the record on appeal exists, to wit: there is no file, no official electronic docket, and no materials . . . there can be no appeal in this case. [Entry date Mar 31 2010.] [DB]" App. 127

The initials "CI" that appear on the Circuit docket in the last entry, are not case manager initials, but denote "Case Initiation Team," another misleading act. App. 127 The last entry falsely states, "Notice from Supreme Court granting extension of time in which to file a [sic] writ of certiorari. [Entry date Aug 5 2010] [CI]." App. 129-145 In truth, the Supreme Court granted Petitioners an extension of time within which to file a petition for writ of certiorari.

CONCLUSION

The magnitude, degree and long time frame of the case destruction and docket tampering, as well as its calculated timing in all aspects of this case, requires the most severe of sanctions and damages awarded to Petitioners and their counsel. Where, as here, the fraud occurs within the court system itself, using both cyber technological and manual record keeping, the system fails to deliver justice to anyone. As recently as 2007, the Hon. Judge Jack B. Weinstein discussed at length the past and future of our judiciary and its basis in human contact and human

concerns.[2] The central problem in this case arises from what should have been the ability of a permanently mentally and physically disabled litigant and its counsel to fully rely on the Eastern District of New York and the Second Circuit Court of Appeals' respective electronic docket systems and documents entries for notice of these courts' respective activities relative to this case. This same problem – to a much lesser degree – was visited and properly resolved by the Eleventh Circuit Court of Appeals slightly more than ten (10) years ago in a criminal case. *Hollins v. Department of Corrections, State of Florida,* 191 F.3d 1324 (11th Cir. 1999). In *Chesney v. Valley Stream U.S.F.D. No. 24 et al.* the fraud and tampering rise to an unprecedented level never raised before any other court in the nation or in this Court. The integrity of the federal judiciary must be protected so as to protect the public trust in the greatest judicial system in the world ever devised by humankind.

This honorable Court is the first court to provide due process to Petitioners after Petitioners filed multiple applications for statutorily mandated relief in two courts over the course of six (6) years, to no avail. Every other petition for certiorari that has been before this Court has had a history of due process, however flawed. Not only has Petitioners' case had

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[2] Jack B. Weinstein, *The Role of Judges in A Government Of, By and For the People, Notes for the Fifty-Eighth Cardozo Lecture,* The Association of the Bar of the City of New York, November 28, 2007.

zero due process, but also, the case has been abducted from the public PACER system and hidden from public view.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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MANDATE

E.D.N.Y.-C. Islip
05-cv-5106
Hurley, J.
Boyle, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 5th day of May, two thousand ten,

Present:

Jon O. Newman,
John M. Walker, Jr., (Filed May 5, 2010)
Gerard E. Lynch,
Circuit Judges.

Kevin G. Chesney, Lorraine Chesney,

Plaintiffs-Appellants,

v. 09-1824-cv

Valley Stream Union Free School District No. 24, *et al.*,

Defendants-Appellees.

In June 2005, Appellants Kevin and Lorraine Chesney filed suit against the Valley Stream Union Free School District and its Board of Education ("District

Defendants"), the Local 74 Service Employees International Union, and the Nassau Country Civil Service Commission, alleging, *inter alia*, violations of the Family and Medical Leave Act, the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the Americans with Disabilities Act, 42 U.S.C. §§ 1983 and 1985, certain constitutional provisions, and various state laws. With the exception of the COBRA claim, the district court dismissed the complaint in its entirety in September 2006 and April 2007; the COBRA claim was dismissed in March 2009, when the court granted the District Defendants' motion for summary judgment, on the basis that Appellant Kevin Chesney had been notified, following his termination from the School District's employ, of his rights to continued health coverage under COBRA.

Appellants now seek, through counsel, to appeal from the district court orders: (1) dismissing under Rule 12 of the Federal Rules of Civil Procedure their claims against Local 74, the Commission, and the District Defendants, except for the COBRA claim; (2) granting summary judgment as to the COBRA claim; (3) denying Appellants' motion to file a second amended complaint, in which Appellants alleged, *inter alia*, "fraud and record tampering" by District Defendants; (4) denying Appellants' motions for reconsideration of all of the preceding orders; and (5) terminating Appellants' counsel, Ruth Pollack, as counsel of record in January 2009, following her suspension by the Eastern District of New York from the practice of law for a period of two years.

Upon due consideration, it is hereby ORDERED that this appeal is DISMISSED in its entirety. *See Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (this Court "has inherent authority, wholly aside from any statutory warrant, to dismiss an appeal or petition for review as frivolous when [it] presents no arguably meritorious issue for our consideration"); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). As an initial matter, Appellants failed to file an appeal brief, as this Court instructed them to do in January 2010. *See* U.S.C.A. Dkt. No. 09-1824-cv at 1/8/2010 Entry. Although Appellants argue that a brief cannot be filed due to missing or altered documents, this Court has confirmed that the electronic record on appeal is complete and, in any event, Appellants were instructed to include any issues concerning the state of the record in their brief. They have not done so.

While the appeal could be dismissed on this ground alone, we also review the merits and find that there is no part of the Appellants' appeal, or their charges of docket tampering, that have an arguable basis in law or fact. Rather, all of the Appellants' claims were properly dismissed by the district court, and Appellants have made no showing that any record tampering occurred, or that any docketed documents have been destroyed or otherwise altered. Indeed, a review of the electronic docket shows that the district record is available in its entirety on PACER and that it is in all respects regular. In any event, most, if not all, of the issues on appeal can be decided without reference to the allegedly altered documents. The motion to file

a second amended complaint, premised as it was on the same meritless claims of tampering and conspiracy that Appellants have raised here, was also properly denied. For these same reasons, the district court's denial of the Appellants' motion for reconsideration did not constitute an abuse of discretion. Finally, to the extent Appellants contest their *pro se* status in the district court, Pollack's representation was properly terminated by the district court, pursuant to the December 2008 order of the Eastern District of New York's Grievance Committee, which suspended her for a period of two years.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe [SEAL]

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

/s/ Catherine O'Hagan Wolfe [SEAL]

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 5th day of February, two thousand and ten,

Before: Reena Raggi,
Circuit Judge.

(Filed Feb. 5, 2010)

Kevin G. Chesney and
Lorraine Chesney,

Plaintiffs-Appellants,

v.

Valley Stream Union Free School
District No.4; et al.,

Defendant-Appellee.

ORDER
Docket No.
09-1824-cv

IT IS HEREBY ORDERED that the motion by Appellants to stay the appeal pending resolution of the

anticipated filings of a petition for *writ of mandamus* and petition for *writ of certiorari*, is DENIED.

FOR THE COURT,
Catherine O'Hagan Wolfe,
Clerk

/s/ Catherine O'Hagan Wolfe [SEAL]
Judy Pisnanont, Motions Staff Attorney

E.D.N.Y.-C. Islip
05-cv-5106
Hurley, J.
Boyle, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of January, two thousand ten,

Present:

Richard C. Wesley,
Peter W. Hall,
Debra Ann Livingston,
Circuit Judges.

(Filed Jan. 7, 2010)

Kevin G. Chesney, Lorraine Chesney,

Plaintiffs-Appellants,

v.

09-1824-cv

Valley Stream Union Free School District No. 24, *et al.*,

Defendants-Appellees,

Counsel for Appellants Kevin and Lorraine Chesney moves for a default judgment and "death knell" sanctions, arguing that Appellees failed to timely respond to their August 2009 motion seeking

"immediate sequestration" of the district court record. Appellants further request that this Court disqualify opposing counsel and appoint an independent federal prosecutor, alleging, *inter alia*, destruction of the case file, tampering with official documents, and improper *ex parte* communications between opposing counsel and the district court. Appellants also move to stay these proceedings pending the results of the proposed criminal probe. Appellees oppose Appellants' motions and seek dismissal of this appeal.

Upon due consideration, it is hereby ORDERED that Appellants' motions are DENIED. Appellants have made no showing that any spoliation or tampering with the record occurred. Should Appellants wish to present additional arguments concerning the state of the record, those contentions should be addressed in their appellate briefs and not in any further motions.

Finally, the representation of the Appellants requires clarification. Thus far, Appellant Kevin Chesney has been represented on appeal by Ruth M. Pollack. In light of Lorraine Chesney's affidavit affirming that she, too, wants Ms. Pollack to represent her, both Appellants are now proceeding with Ms. Pollack as counsel of record. Accordingly, Appellants are ORDERED to file their opening brief within thirty days

of this order, after which the appeal will be calendared for oral argument in the normal course.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: /s/ Franklin Perez

E.D.N.Y.-C. Islip
05-cv-5106
Hurley, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of August, two thousand nine,

Present:

José A. Cabranes,
Robert D. Sack,
Richard C. Wesley,
Circuit Judges.

(Filed Aug. 20, 2009)

Kevin G. Chesney, Lorraine Chesney,

Plaintiffs-Appellants,

v.

09-1824-cv

Valley Stream Union Free School District No. 24, *et al.*,

Defendants-Appellees.

We are informed that the Appellants' district court motion for reconsideration of the judgment dismissing their action remains pending. Since that motion is governed by Federal Rule of Appellate Procedure 4(a)(4), the notices of appeal which led to the

docketing of the present appeal are not yet effective, and will become effective only upon entry of the district court's order disposing of the pending motion. *See* Fed. R. App. P. 4(a)(4)(B)(i) (stating that a notice of appeal "becomes effective to appeal a judgment or order . . . when the order disposing of [a motion listed in Rule 4(a)(4)(A)] is entered"). Thus, proceedings in this appeal are stayed, by operation of Rule 4(a)(4), pending resolution of the Appellants' motion for reconsideration by the district court. The Appellants must notify this Court of the district court's decision on that motion within thirty days of the entry of that decision on the district court's docket.

Furthermore, the representation of the Appellants requires clarification: Appellant Kevin G. Chesney is represented by Ruth M. Pollack, while Appellant Lorraine Chesney is proceeding *pro se*.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: /s/ Michael Zachary
Michael Zachary
Supervisory Staff Attorney

EDNY/CINY
05-cv-5106
Hurley

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURTHOUSE
40 FOLEY SQUARE
NEW YORK 10007

Thomas Asreen
ACTING CLERK

Date:	11/20/06
Docket Number:	06-4976-cv
Short Title:	Chesney v. Valley Stream Union Free School District No.
DC Docket Number:	No. 05-cv-5106
DC:	EDNY (CENTRAL ISLIP)
DC Judge:	Honorable Denis Hurley

(Filed Nov. 20, 2006)

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of November, two thousand 2006.

Chesney v. Valley Stream U.F.S.D. 06-4976-cv

The *Civil Appeals Management Plan* of this court directs that within the (10) days after filing a Notice of Appeal the appellant shall file and serve a Pre-Argument Statement (FORM C), order a transcript of the proceedings from the court reporter and file and

serve a statement concerning same (FORM D), pay docketing fee, and that in the event of default of any of these requirements the Clerk may dismiss the appeal without further notice.

The appellant herein not having so proceeded, upon consideration thereof it is **ORDERED** that the appeal from the order of 9/22/06 United States Court for the Eastern Distrcit of New York be, and it hereby is **DISMISSED**. Any motions pending prior to the entry of this order of dismissal are deemed **MOOT**.

No case file at EDNY 7/10/09 05-cv-5106

"cannot be found"

"not available"

"destroyed"

For the Court,
Thomas Asreen, Acting Clerk

By: /s/ Eniola O. Ajayi
By: Eniola O. Ajayi
Deputy Clerk

A TRUE COPY
ATTEST
DATED JUL 10 2009 20
ROBERT C. HEINEMANN

CLERK

BY /s/ [Illegible]
DEPUTY CLERK

A TRUE COPY
Thomas Asreen, Acting Clerk

by /s/ Eniola O. Ajayi CERTIFIED:
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

KEVIN CHESNEY and LORRAINE CHESNEY,

Plaintiffs,

- against -

VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24; VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24 BOARD OF EDUCATION; JOSEPH CONRAD, President; CAROLE MEANEY, Vice President; HENRIETTA CARBONARO, PAUL DePACE, ANTHONY IADEVAIO, FRANK NUARA, and LAWRENCE TROGEL; each in his individual and official capacity; EDWARD M. FALE, Ph.D., SUPERINTENDENT OF SCHOOLS, in his individual and official capacity; LISA K. CONTE, PRINCIPAL; CHARLES BROCEAUR, MAINTENANCE SUPERVISOR, in his individual and official capacity; STEPHEN HARAMIS, CUSTODIAN AND UNION REPRESENTATIVE, in his individual and official

JUDGMENT

CV-05 5106 (DRH)

(Filed May 15, 2009)

capacity; LOCAL 74 SEIU; "JOHN DOES and JANE DOES A through D", the latter being persons and/or entities unknown to complainant, and the NASSAU COUNTY DIVISION of the CIVIL SERVICE COMMISSION OF NEW YORK STATE, Defendants.

Defendant.

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A Memorandum and Order of Honorable Denis R. Hurley, United States District Judge, having been filed on May 14, 2009, denying Plaintiffs' motion for leave to file the second amended complaint, and directing the Clerk of Court to close this case on or after May 15, 2009 (the date on which the Court's March 31, 2009 Order granting summary judgment on the COBRA claim becomes effective), it is

ORDERED AND ADJUDGED that Plaintiffs take nothing of Defendants; that Plaintiffs' motion for leave to file the second amended complaint is denied; that Defendants' motion for summary judgment is granted; and that this case is hereby closed.

Dated: Central Islip, New York
May 15, 2009

ROBERT C. HEINEMANN
CLERK OF THE COURT

By: /s/ Catherine Vukovich
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

KEVIN CHESNEY and
LORRAINE CHESNEY,

Plaintiffs,

– against –

VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24; VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24 BOARD OF EDUCATION; JOSEPH CONRAD, President; CAROLE MEANEY, Vice President; HENRIETTA CARBONARO, PAUL DEPACE, ANTHONY IADEVAIO, FRANK NUARA, and LAWRENCE TROGEL; each in his individual and official capacity; EDWARD M. FALE, Ph.D., Superintendent of Schools, in his individual and official capacity; LISA K. CONTE, PRINCIPAL; CHARLES BROCEAUR, MAINTENANCE SUPERVISOR, in his individual and official capacity; STEPHEN HARAMIS, CUSTODIAN AND UNION REPRESENTATIVE, in his individual and official capacity; LOCAL 74 SEIU; "JOHN DOES and JANE DOES A through D", the latter being

MEMORANDUM & ORDER
05 Civ. 5106
(DRH) (ETB)

(Filed May 14, 2009)

persons and/or entities unknown
to complainant, and the NASSAU
COUNTY DIVISION of the
CIVIL SERVICE COMMISSION
OF NEW YORK STATE,

Defendants.
----------X

APPEARANCES:

Ruth M. Pollack, Esq.[1]
Attorney for Plaintiffs
21 West Second Street
P. O. Box 120
Riverhead, New York 11901

Sokoloff Stern LLP
Attorneys for Defendants Valley Stream Union Free Sch. Dist. No. 24, Valley Stream Union Free School Dist. No. 24 Board of Education, Joseph Conrad, Carole Meaney, Henrieta Carbonaro, Paul Depace, Anthony Iadevaio, Frank Nuara, Lawrence Trogel, Edward M. Fale, Lisa K. Conte, Charles Broccaur and Stephen Haramis
355 Post Avenue, Suite 201
Westbury, New York 11590
By: Steven C. Stern, Esq.

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[1] Ms. Pollack was counsel of record for Plaintiffs at the time the instant motion was briefed and submitted. Currently, Plaintiffs are proceeding pro se.

Lamb & Barnosky, LLP
Attorneys for Defendants Valley Stream Union Free Sch. Dist. No. 24, Valley Stream Union Free School Dist. No. 24 Board of Education, Joseph Conrad, Carole Meaney, Henrieta Carbonaro, Paul Depace, Anthony Iadevaio, Frank Nuara, Lawrence Trogel, Edward M. Fale, Lisa K. Conte, Charles Broceaur and Stephen Haramis
534 Broadhollow Road, Suite 210
P.O. Box 9034
Melville, New York 11747
By: Michelle S. Feldman, Esq.

HURLEY, Senior District Judge:

Plaintiffs Kevin Chesney ("Plaintiff" or "Chesney") and Lorraine Chesney[2] brought the present suit against Valley Stream Union Free School District No. 24 (the "District"); Valley Stream Union Free School District No. 24 Board of Education; Joseph Conrad; Carole Meaney; Henrietta Carbonaro; Paul DePace; Anthony Iadevaio; Frank Nuara; Lawrence Trogel; Edward M. Fale ("Fale"); Lisa K. Conte; Charles Broceaur; Stephen Haramis (hereinafter, collectively, "District Defendants"); Local 74 Service Employee International Union ("Local 74"); "John Does and Janes Does A through D"; and the Nassau County Civil Service Commission (the "Commission") in the Supreme Court of the State of New York County of

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[2] Although named as a plaintiff, Lorraine Chesney, Plaintiff's wife, asserted no claims and sought no relief in either the original or amended complaint. She is not named as a plaintiff in the Proposed Second Amended Complaint.

Nassau alleging violations of the Family and Medical Leave Act ("FMLA"), 29 U.S.C. §§ 2601 et seq.; the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), 29 U.S.C. § 1166; the Americans with Disabilities Act ("ADA"), 42 U.S.C.A. § 12131 *et seq*; Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 1983 and 1985; the Equal Protection clause of the Fourteenth Amendment; the "Eighth Amendment right to confront his accusers"; and six state law claims. The action was removed to this Court in November 2005.

Currently before the Court is Plaintiff's motion for leave to file his Second Amended Complaint (the "SAC"). For the reasons set forth below, the motion is denied.

Factual and Procedural Background

Subsequent to the removal of the action from state court, the District Defendants moved to dismiss the Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(4), (5), and (6). Defendant Local 74 moved separately to dismiss the Amended Complaint pursuant to Rule 12(c).

By Memorandum and Order dated September 22, 2006, the Court (1) dismissed all claims against Defendant Local 74 and (2) granted the District Defendants' motion to dismiss the claims against them with the exception of Plaintiff's COBRA claim.

Thereafter, the Commission moved to dismiss the Amended Complaint as to the claims asserted against it. By Memorandum and Order dated April 30, 2007, the Commission's motion was granted.

As a result of the two decisions set forth above, the lone surviving claim was Plaintiff's COBRA claim against District Defendants.

On October 29, 2006, Plaintiff moved for an extension of time until November 8, 2006 to move for reconsideration of the Court's September 22, 2006 decision. The application was granted. No motion for reconsideration was filed. Rather, on November 12, 2006, Plaintiff's counsel filed an "affirmation of actual engagement." In that affirmation, counsel stated she would be on trial and therefore unavailable to move to amend the complaint, move for reconsideration of the September 22, 2006 decision, or to proceed with discovery in this case "until further notice" and requested that "all activity" in this case be temporarily stayed pending counsel's availability. On November 13, 2006, the Court denied a further extension of time to move for reconsideration and denied the request for a stay of these proceedings.

By application dated February 13, 2008, Plaintiff sought permission to file a motion for leave to serve his proposed Second Amended Complaint. The Court addressed that application in an Order dated April 2, 2008 (the "2008 Order"). In its 2008 Order, the Court noted that, in fact, the application sought two forms of relief, to wit (1) reconsideration of the September

22, 2006 Memorandum and Order, and (2) leave to amend the complaint to add three new causes of action. The Court denied the motion for reconsideration as untimely and because Plaintiff could not meet the strict standard for reconsideration. The Court granted leave to move to serve the Proposed Amended Second Complaint to assert three new causes of action[3] for (1) "fraud and record tampering;" (2) violations of the "ADA of 1990 and its New York counterpart;" and (3) violations of Section 504 of the Rehabilitation Act of 1973, as amended, and set a briefing schedule therefor.

Pursuant to the briefing schedule, as amended, on August 4, 2008, (1) Defendants' papers in opposition to the motion to file the Second Amended Complaint and (2) Plaintiff's reply papers in further support of the motion to amend were filed. Which is to say, the moving papers served by the Plaintiff were not filed on August 4, 2008. When the Court discovered the error, it directed that the moving papers be filed.[4]

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[3] In support of the application seeking leave to make the motion, Plaintiff attached a proposed SAC; the three "new" causes of action that the Court granted leave to move for were the fourteenth, fifteenth and sixteenth causes of action.

[4] At the time of the Court's direction, Plaintiff was proceeding pro se and therefore the Court directed by ECF Order that the moving papers be filed by Defendants. By letter dated April 1, 2009, Plaintiff informed the Court that the papers filed by Defendants were incomplete and provided copies of the documents omitted. (*See* Docket No. 123.) The Court in rendering

(Continued on following page)

The Court notes that absent from the moving papers (as filed on March 31, 2009, and supplemented on April 1, 2009,) is any captioned document entitled "Second Amended Complaint" or the like. Rather, included is a document commencing with numbered page 7 and continuing to page 18 that appears to be the proposed pleading. Indeed, Defendants' opposing papers, filed August 4, 2008, note the receipt of only the document with pages 7 through 18 and the absence of any captioned document purporting to be the proposed second amended complaint. In apparent recognition of the omission, Plaintiff's reply papers as filed on August 4, 2008, include a complete document with caption, entitled "Second Amended Verified Complaint." The document entitled "Second Amended Verified Complaint" includes the causes of action dismissed by the Court's Memorandums and Orders. In referencing the SAC, the Court shall be referring to the "Second Amended Verified Complaint" attached to Plaintiff's reply papers, although the Court's discussion shall be limited to the three causes of action referenced in the Court's April 2, 2008 Order, to wit the fourteenth ("fraud and work record tampering"), fifteenth (violations of the ADA and its New York counterpart), and sixteenth causes of action (violation of Section 504 of the Rehabilitation Act).

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this decision has considered the materials submitted with Plaintiff's April 1, 2009 letter.

The facts as alleged in the SAC, which are accepted as true for purposes of this motion, that relate to the proposed new claims are as follows:

Chesney began employment with the District as a "Cleaner" on October 3, 2003. (SAC ¶¶ 12, 13, 15.) He attained permanent civil service status effective April 5, 2004. (*Id.* ¶¶ 13-14.) On May 17, 2004, after cleaning the vast majority of the school on his own, Plaintiff began to "break down" the gym, which he had set up the night before for a Parent Teachers Association event, and get it ready for the annual school budget vote. (*Id.* ¶¶ 18-19.) "[W]hile performing his duties he felt a 'pop' in his back, which turned out to be a herniation with serious sequilae;" nevertheless, he continued to work until he completed his duties for the day. (*Id.* ¶ 21.) The next day he "could barely get out of bed" but went to the District to fill out an accident report. He "missed several days of work due to the injury and doctors' appointments." (*Id.* ¶ 24.) On or about May 25, 2004, he submitted a workers' compensation claim. (*Id.* ¶ 26.)[5] "Due to the

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[5] With respect to the workers' compensation claim, the SAC alleges "After a series of hearings and appeals by the District Defendants, The Workers [sic] Compensation Board found against the District and in favor of Chesney in that on June 27, 2005 and July 25, 2005 the Board in WCB Case No.2040 4577 determined that Chesney sustained his injury to his leg and back on 5-17-04 on District time and that he had at least a partial disability, and that he made no material representations as to his lawful taxicab while he was out of sick leave time." (*Id.* ¶ 31.) "Plaintiff's counsel served a letter notice of his claim and intent to sue the District on Fale [the District's superintendent

(Continued on following page)

extent of his injury, Chesney could not continue to return to his job for a period of time. Chesney notified his superiors of the reason he could not come to work at this time. On or about June 9, 2004, he left work early and did not return at that time due to his disability." (*Id.* ¶¶ 28-30.)

On or about June 11, 2004, Defendant Steven Haramis contacted Superintendent Fale claiming Plaintiff was driving a cab. Fale then ordered an investigation of Plaintiff's second job as a taxi driver, which Plaintiff claims "was a legal second job under Worker's Compensation Law." (SAC ¶¶ 51-52.) District personnel sent a letter to the taxi company threatening legal action if it did not provide the District with all information about Plaintiff's employment. (*Id.* ¶ 55.)

On June 14, 2004, Plaintiff was advised to attend an emergency meeting with the Superintendent that afternoon. At the meeting, Superintendent Fale stated "You were seen driving a cab at about 6:30 p.m. on June 11; you cannot be employed or receive any income while receiving workers' compensation benefits; that is insurance fraud, working your second job and being out sick while I'm paying for overtime is theft of services. We are terminating you, but if you resign right now, you will leave with a good recommendation, clean record, and I will allow you [to]

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of Schools] by certified mail within 85 days of his termination." (*Id.* ¶ 32.)

pursue your compensation claim." (*Id.* ¶ 60.) Presumably, Chesney declined the offer. Defendant Board voted to terminate Chesney based on the recommendation of Superintendent Fale. (*Id.*)

Chesney claims he was "terminated unlawfully in part because he was known and/or perceived to be disabled. . . . In contrast to Chesney, Haramis, a similarly situated employee custodial worker, received leave time from Fale for an alleged injury just before he retired to take another job." (*Id.* ¶¶ 64-65.)

Plaintiff alleges that the District Defendants and Local 74 "tampered with the official District hourly work records of [P]laintiff in an effort to create the false impression that he had leave time available when in fact, he did not." (*Id.* ¶ 111.) "The records were tampered with and altered by the unlawful insertion of language and verbiage over the signature of Chesney without his knowledge or consent. . . . This tampering was done to defraud plaintiff, the taxpaying public, this court, the State of New York and the Federal government." (*Id.* ¶¶ 112-13.) "District defendants . . . made misrepresentations to the public in Board Meetings, public meetings, and engaged in violations of their fiduciary duties to plaintiff, in the malicious abuse of process, abuse of power, negligent infliction of emotional distress, negligent hiring, training and retention of certain employees who acted with the Superintendent, and finally by its failure and refusal to provide information to plaintiff in violation of the Freedom of

Information Law, Public Officer's Law Sec. 84, et seq. after he duly requested such information." (*Id.* ¶ 115.)

Plaintiff also alleges that "Defendants violated the ADA of 1990 and its New York counterpart by discriminating against plaintiff when he advised them of his on the job injury. Defendants also violated the ADA by retaliating against plaintiff when he opposed Defendants' unlawful employment practices against him." (*Id.* ¶¶ 118-19.)

Finally, Plaintiff alleges that "Defendants . . . violated Section 504 of the Rehabilitation Act of 1973 in that [they] discriminated against plaintiff while receiving financial assistance as a state, public education institution." (*Id.* ¶ 122.)

Discussion

I. Legal Standard for a Motion to Amend

Federal Rule of Civil Procedure ("Rule") 15(a) provides, in pertinent part, that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). A motion to amend may properly be denied on the grounds of undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, or futility of the proposed amendment. *See Dluhos v. Floating & Abandoned Vessel, Known as N.Y.*, 162 F.3d 63, 69 (2d Cir. 1998) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Although the

decision whether to allow a party to amend its complaint is left to the sound discretion of the district court, there must be good reason to deny the motion. *See Acito v. IMCERA Group, Inc.*, 47 F.3d 47, 55 (2d Cir. 1995); *see also S.S. Silberblatt, Inc. v. E. Harlem Pilot Block-Bldg. 1 Hous. Dev. Fund Co.*, 608 F.2d 28, 42 (2d Cir. 1979).

"One appropriate basis for evaluating the productivity of a proposed amendment lies in the relative futility of accepting the proposed amended complaint." *Wilson v. Toussie*, 260 F. Supp. 2d 530, 535 (E.D.N.Y. 2003); *accord Jones v. N.Y. State Div. of Military & Naval Affairs*, 166 F.3d 45, 50 (2d Cir. 1999). If the proposed amendment would not survive a motion to dismiss, then it is appropriately denied as futile. *Wilson v. Toussie*, 260 F. Supp. 2d at 535 (citing *Dougherty v. North Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 88 (2d Cir. 2002)).

The Supreme Court recently clarified the pleading standard applicable in evaluating a motion to dismiss under Rule 12(b)(6). In *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), the Court disavowed the well-known statement in *Conley v. Gibson*, 355 U.S. 41 (1957) that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* at 45-46. Instead, to survive a motion to dismiss under *Twombly*, a plaintiff must allege "only enough facts to state a claim to relief that is plausible on its face." 127 S. Ct. at 1974.

> While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).

Id. at 1964-65 (citations and internal quotation marks omitted).

The Second Circuit has stated that *Twombly* does not require a universally heightened standard of fact pleading, but "instead requir[es] a flexible 'plausibility standard,' which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim *plausible*." *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007), *cert. granted*, 128 S. Ct. 2931 (June 16, 2008). In other words, *Twombly* "'require[s] enough facts to 'nudge [plaintiffs'] claims across the line from conceivable to plausible.'" *In re Elevator Antitrust Litig.*, 502 F.3d 47, 50 (2d Cir. 2007) (quoting *Twombly*, 127 S. Ct. at 1974)). Although *Twombly* did not make clear whether the plausibility standard applies beyond the antitrust context, the Second Circuit has "declined to read *Twombly's* flexible 'plausibility standard' as relating only to antitrust cases." *ATSI Commn's, Inc. v. Shaar Fund, Ltd.*, 493

F.3d 87, 98 n.2 (2d Cir. 2007). As always, the Court must "accept[ ] all factual allegations in the complaint and draw[ ] all reasonable inferences in the plaintiff's favor." *Id.* at 98.

II. The Parties' Positions

Defendants oppose Plaintiff's motion to amend his complaint. First, they maintain the motion is untimely, having been filed after the court ordered deadline for amending pleadings, and prejudicial to them as discovery, which has concluded, would have to be reopened. Second, they argue that the amendments are futile; more specifically, they point to (1) the failure to file a timely complaint with the EEOC, a prerequisite to filing an ADA claim; (2) the failure to meet the threshold requirements to assert any claim under the ADA or the Rehabilitation Act; and (3) the failure to file a notice of claim as required by New York law, a prerequisite to the assertion of Plaintiff's state law claims.

In response, Plaintiff argues that under the Federal Rules of Civil Procedure amended pleadings may be filed anytime up until the time of trial. With respect to the claim under the ADA, Plaintiff does not maintain that he did in fact file a complaint with the EEOC but rather that the Second Circuit has carved out "an exception where claims are sufficiently related to the allegation in the charge that it would be unfair to civil rights plaintiffs to bar such claims in civil actions. . . . This condition is met when the

conduct in a civil complaint would fall within the scope of the investigation that would reasonably grow out of the EEOC charge of discrimination. . . . My case is all about disability and related claims and nothing I have pled to date would fall outside the scope of any EEOC investigation." (Pl.'s Reply Aff. at ¶¶ 6-7.) With respect the Defendants' notice of claim argument, Plaintiff maintains that such "notice of claim is not required where fraud, which has a six year statute of limitations, in on the part of the District itself. Upon discovering the fraud in this case in the documents filed by Defendants, I immediately filed an affidavit putting them on notice of the fraud. Thus, [the] docket reflects that 'notice' of the fraud and tampering was filed once discovered. . . . The District never states how it is prejudiced by any lack of a formal notice of claim." (*Id.* ¶ 10.)

III. The Proposed Amendment is Untimely and Would Prejudice the Defendants

In this case, Plaintiff's delay of more than two years in seeking to amend[6] would significantly delay the resolution of this case and therefore it would be an appropriate exercise of this Court's discretion to deny the motion. *See Zahra v. Town of Southold,* 48 F.3d 674, 685-86 (2d Cir. 1995). Further, it is

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[6] The Court has calculated the delay as running from the commencement of the action until February 2008 when Plaintiff sought leave to file his motion to amend.

apparent that, with respect to the ADA and Rehabilitation Act claims, Plaintiff knew or should have known of the facts upon which the amendment is based and no excuse is offered for the delay. *See Walker v. Caban,* 2008 WL 4925204, * 13 (S.D.N.Y. Nov. 19, 2008), Report and Recommendation Adopted, 2008 WL 5148794 (S.D.N.Y. Dec. 5, 2008). Turning then to the fraud and record tampering claim, it appears to be premised upon the District's alleged falsification of Plaintiff's time sheets.[7] According to the reply affidavit of Plaintiff, he first learned of the alleged tampering when Defendants "annexed to its papers before this Court's first decision, a) a time sheet I was not paid for to date, and b) a time sheet that was not completed [by] me in my handwriting and clearly tampered with by someone at the District." (Pl.'s Reply Aff. in Supp. of Motion to Amend ¶ 2.) Given that the Court's first decision in this matter was September 22, 2006, Plaintiff should have known of the alleged fraud/tampering at least by that

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[7] The claim for fraud and record tampering also asserts that "District defendants . . . made misrepresentations to the public in Board Meetings, public meetings, and engaged in violations of their fiduciary duties to plaintiff, in the malicious abuse of process, abuse of power, negligent infliction of emotional distress, negligent hiring, training and retention of certain employees who acted with the Superintendent, and finally by its failure and refusal to provide information to plaintiff in violation of the Freedom of Information Law, Public Officer's Law Sec. 84, et seq. after he duly requested such information." (*Id.* ¶ 115.) The Court notes that near identical allegations were made in the original complaint. *See* Compl. ¶ 63.

date. But Plaintiff's unexcused delay is not the only factor that supports denial of leave to amend.

If the claims were allowed, Defendants would have to bear greater litigation costs because of the need to conduct discovery on these claims and the need for discovery would result in a delay of the resolution of the case as discovery was certified as complete as of October 16, 2007,[8] four months before Plaintiff commenced the process for moving to amend the complaint. *See Classicberry Ltd. v. Musicmaker.Com, Inc.*, 48 Fed. Appx. 360, 362 (2d Cir. 2002) (summary order); *see also Krumme v. Westpoint Stevens, Inc.*, 143 F.3d 71, 88 (2d Cir. 1998) ("'One of the most important considerations in determining whether amendment would be prejudicial is the degree to which it would delay the final disposition of the action.'") (quoting *H.L Hayden Co. v. Siemens Med. Sys.*, 112 F.R.D. 417, 419 (S.D.N.Y. 1986)); *Bartel v. Renard,* 1998 WL 784027, *3 (2d Cir. 1998) ("A proposed amendment is especially prejudicial when discovery has already been completed.").

Moreover, the Scheduling Order entered in this case required that motions to amend pleadings were to be served and filed no later than April 16, 2007. (Docket No. 75.) Plaintiff did not file its pre-motion conference letter for the proposed motion to amend until February 18, 2008, ten months past the Court-ordered

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[8] Order of Magistrate Judge E. Thomas Boyle, dated November 2, 2007 (Docket No. 86).

deadline. As the motion to amend was not made until after the Court-imposed cut-off date for such amendments, the "higher 'good cause' standard of Fed. R. Civ. P. 16(b) applies to [plaintiff's] motion to amend." *Classicberry*, 48 Fed. Appx. at 362 (citing *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir. 2000)); *see also Abram v. City of Buffalo*, 2008 WL 5191675, * 7-8 (W.D.N.Y. 2008). Given that the facts underlying the new claims "were . . . known" to Plaintiff prior to the deadline for amendment of pleadings and "no justification for the delay is presented, there is plainly no showing of 'good cause'. . . ." *Id.*

When Plaintiff's delay is coupled with failure to comply with the scheduling order deadline for the amendment of pleadings, the prejudice resulting from the fact that leave to amend was sought after the close of discovery and that allowance of the amendment would delay the final disposition of this action, the sound exercise of the Court's discretion warrants denial of the motion.

IV. The Proposed Amendments are Futile

The proposed amendment is also subject to denial on the grounds of futility. As set forth in detail below, the proposed causes of action would not survive a motion to dismiss and therefore the amendment is appropriately denied as futile. *See Wilson v. Toussie*, 260 F. Supp. 2d at 535.

A. The ADA Claims

In order to bring an employment related ADA claim, including one alleging retaliation, a plaintiff must exhaust his administrative remedies and obtain a right to sue letter. *See McInerney v. Rensselaer Polytechnic Inst.*, 505 F.3d 135, 138 (2d Cir. 2007).[9] Plaintiff does not assert that he filed a complaint with the EEOC or its state counterpart; he simply insists that he had no such obligation because the Second Circuit has carved out "an exception where claims are sufficiently related to the allegation in the charge that it would be unfair to civil rights plaintiffs to bar such claims in civil actions. . . . This condition is met when the conduct in a civil complaint would fall within the scope of the investigation that would reasonably grow out of the EEOC charge of discrimination. . . . My case is all about disability and related claims and nothing I have pled to date would fall outside the scope of any EEOC investigation." (Pl.'s Reply Aff. at ¶¶ 6-7 (citing, inter alia, *Wallace v. Seacrest Linen*, 2006 WL 2192777 (S.D.N.Y. Aug. 2, 2006), *Stewart v. U.S. Immig. & Naturalization Serv.*, 762 F.2d 193 (2d Cir. 1985).) The referenced exception, however, only applies when an EEOC complaint has been filed as to one or more but not all of a plaintiff's claims. If the omitted claim is "reasonably

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[9] Indeed, in its September 22, 2006 Memorandum & Order, this Court dismissed Plaintiff's fifth cause of action, which also alleged a violation of the ADA, for failure to exhaust administrative remedies.

related to" a charge filed with the EEOC, the exhaustion requirement will be met. *See, e.g., Stewart,* 762 F.2d at 198 (noting that "district courts may assume jurisdiction over a claim 'reasonably related' to a charge filed with the EEOC" but finding that the claim at issue was not reasonably related). Here, there is no indication that Plaintiff filed any charge against any of the District Defendants and therefore no "reasonably related" determination can be made.

Because Plaintiff has failed to plead he exhausted his administrative remedies with the EEOC, the proposed ADA claims would be subject to dismissal on a motion to dismiss and thus leave to amend to assert them is appropriately denied as futile.

B. The Rehabilitation Act Claim

Section 504 of the Rehabilitation Act provides in relevant part that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability . . . be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." 29 U.S.C. § 794(a). The standards used to determine whether § 504 has been violated in an action alleging employment discrimination are those applied under the ADA. *Id.* § 794(d); *see also*

Lyons v. Legal Aid Soc'y, 68 F.3d 1512, 1515 (2d Cir. 1995).[10]

A claim for violation of § 504[11] requires a plaintiff to demonstrate that "(1) he is a 'qualified individual' with a disability; (2) the defendants are subject to the ADA; . . . (3) that the plaintiff was denied the opportunity to participate in or benefit from defendants' services, programs or activities, or was otherwise discriminated against by defendants by reason of plaintiff's disabilities . . . [and (4)] that the defendants

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[10] The Court notes that the ADA was recently amended to substantially change the evaluation of ADA claims. *See* ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008). The ADA Amendments Act expressly provides that its provisions shall not take effect until January 1, 2009. When a case implicates a federal statute enacted after the events in suit, that statue will not be construed to have retroactive effect absent clear congressional intent. *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). Given the 2008 Act's express effective date, there is no clear congressional intent to have it apply retroactively. Accordingly, the Court shall not apply the 2008 Amendments retroactively to the conduct at issue which preceded the 2008 Act's effective date. *Accord, EEOC v. Agro Distr. LLC*, 555 F.3d 462, 469 n.8 (5th Cir. 2009); *Kiesewetter v. Caterpillar, Inc.*, 295 Fed. Appx. 850, 851 (7th Cir. 2008); *Budde v. Kane County Forest Preserve*, 2009 WL 736646, at * 4 n.4 (N.D. Ill. Mar. 19, 2009); *Amorosi v. Molino*, 2009 WL 737338, at * 4 n.7 (E.D. Pa. Mar, 19, 2009); *Czapinski v. Iron City Indus. Cleaning Corp.*, 2009 WL 614808, at * 2 n.2 (W.D. Pa. Mar. 5, 2009); *Geoghan v. Long Island R.R.*, 2009 WL 982451, * 9 (E.D.N.Y. Apr. 9, 2009).

[11] The first three of the enumerated requirement also apply to a claim under the ADA. *See Mele v. Hill Health Center*, 2009 WL 859081 * 5 (D. Conn. Mar. 31, 2009); *see also Stone v. City of Mount Vernon*, 118 F.3d 92, 96 (2d Cir. 1997).

receive federal funding." *Henrietta D. v. Bloomberg,* 331 F.3d 261, 272 (2d Cir. 2003).

The proposed Rehabilitation Act claim is deficient because Plaintiff does not allege sufficient facts to support that he is a qualified individual with a disability. An individual with a "disability" is defined as any person who (1) has a physical or mental impairment that "substantially limits" one or more "major life activities"; (2) has a "record of such impairment"; or (3) is "regarded as" having such an impairment. 42 U.S.C. § 12102(2).

The SAC does not identify what, if any, major life activity was substantially limited by Plaintiff's impairment, "a herniation with serious sequilae." (SAC ¶ 21.)) While working constitutes a major life activity, "the inability to perform a single particular job does not constitute a substantial limitation in the major life activity of working." *Temple v. Bd. of Educ.,* 322 F. Supp. 2d 277, 281 (E.D.N.Y. 2004). Rather for the major life activity of working to be impaired, one must be "disabled from a 'broad range of jobs' as compared with the 'average person having comparable training, skills and abilities.'" *Doe v. Bd. of Ed.,* 63 Fed. Appx. 46, 49 (2d Cir. 2003) (summary order) (quoting *Bartlett v. N.Y. State. Bd. of Law Exam'rs,* 226 F.3d 69, 82-83 (2d Cir. 2000)); *see Giordano v. City of New York,* 274 F.3d 740 (2d Cir.2001). Here, the SAC cannot be read to claim that Plaintiff was substantially impaired in the life activity of working as both the SAC and the June 27, 2005 New York State Worker's Compensation Board Memorandum

annexed to the SAC refer to Plaintiff working as a taxi driver both at the time of his injury and his termination, as well as for a period of time thereafter. (SAC ¶ 31.)

Even assuming that Plaintiff has alleged sufficient facts to support that he is an individual with a disability, he has not alleged any facts suggesting that his discharge was due to his disability. To the contrary, he asserts that he was terminated because he was accused of driving a cab while receiving workers' compensation benefits, which the District claimed was "insurance fraud" and "theft of services." (SAC ¶ 60; *see also* Pl.'s Reply Aff. ¶ 12 ("I was unlawfully terminated for a legal concurrent job permitted under WCL.").) *Cf. Mele v. Hill Health Center*, 2009 WL 859081 * 5 (D. Conn. Mar. 31, 2009) (dismissing ADA and Rehabilitation Act claims because complaint did not allege facts showing that plaintiff was discriminated against because of disability).

The proposed pleading fails to state a claim for violation of § 504 of the Rehabilitation Act and therefore leave to amend to assert the claim is appropriately denied as futile.

C. The State Law Claim

As noted earlier, Defendants argue that Plaintiff cannot assert claims under state law for "fraud and record tampering" and the "New York Counterpart of the ADA" because he never filed a notice of claim. The Court, however, need not reach the issue as there is

no longer any independent basis for federal jurisdiction in the within action given the Court's Memorandum & Order, dated March 31, 2009, granting Defendants summary judgment on Plaintiff's COBRA claim. Accordingly, it would be inappropriate for the Court to permit the amendment to assert a state claim, the resolution of which would require the determination of additional factual and legal issues. *See* 28 U.S.C. § 1367(c)(3) ("The district court may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction. . . ."); *N.Y. Mercantile Exch., Inc. v. Intercontinental Exch., Inc.*, 497 F.3d 109, 119 (2d Cir. 2007) (holding that dismissal of remaining state claims after the dismissal of federal claims is particularly appropriate where the resolution of the state law claims entails resolving additional legal and factual issues).

Conclusion

For the reasons set forth herein, Plaintiff's motion for leave to file the second amended complaint is denied. The Clerk of Court shall close this case on or after May 15, 2009 (the date on which the Court's

March 31, 2009 Order granting summary judgment on the COBRA claim becomes effective).

SO ORDERED.

Dated: Central Islip, N.Y.
May 14, 2009

/s/
Denis R. Hurley
United States Senior
District Judge

2:05-cv-05106-DRH-ETB Chesney et al v.
Valley Stream Union Free School District No. 24 et al
Denis R. Hurley, presiding
E. Thomas Boyle, referral
Date filed: 11/01/2005
Date terminated: 05/15/2009
Date of last filing: 06/07/2010

Query

Alias
Associated Cases
Attorney
Case File Location . . .
Deadlines/Hearings . . .
Docket Report . . .
Filers
History/Documents . . .
Party
Related Transactions . . .
Status
View a Document

* * *

Michelle S. Feldman
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Frank Nuara

represented by **Steven C. Stern**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Melissa Lauren Holtzer
(See above for address)
ATTORNEY TO BE NOTICED

Michelle S. Feldman
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Lawrence Trogel
each in its individual and official capacity

represented by **Steven C. Stern**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Melissa Lauren Holtzer
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ATTORNEY TO BE NOTICED

Michelle S. Feldman
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Local 74 SEIU
TERMINATED: 09/22/2006

represented by **Gary Silverman**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/07/2010	166	ORDER : Plaintiffs are advised that only documents captioned in this court (i.e., the Eastern District of New York) under Civil Action No. 05-5106 should be filed in this action. To the extent plaintiffs continue to file in this case documents which are captioned either in other courts or in cases other than Civil Action No. 05-5106, such action may be considered an abuse of the electronic filing privilege warranting revocation of that privilege. See attached order for details. Ordered by Senior Judge Denis R. Hurley on 6/7/2010. (Entered: 06/07/2010)
05/03/2010	165	RESPONSE to Motion re 80 Letter MOTION for Extension of Time to Complete Discovery *in accordance with Proposed Discovery Schedule*, 94 Supplemental MOTION to Reopen Case *NOTE RE: Rule 8 (Supplement to Reply)*, 99 Fully Briefed MOTION for Summary Judgment, 60 MOTION to Dismiss, 24 Second MOTION for Extension of Time to File Response/ Reply *re: Local 74 motion for judgment on the pleadings*, 37 Letter MOTION for Extension of Time to File Response/ Reply as to 18 MOTION for Judgment on the Pleadings, 22 Letter, 35 Amended

NOTICE OF APPEAL

****

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

Kevin G. Chesney and Lorraine Chesney, Plaintiff-Appellant, – against – Valley Stream Union Free School District No. 24, et al., Defendant-Respondent.	NOTICE OF APPEAL (Filed Apr. 28, 2009) Docket No. 05cv5106 (ETB)(DRH)

Notice is hereby given that Kevin G. Chesney and Lorraine Chesney hereby appeal to the United States Court of Appeals for the Second Circuit from the "Memorandum and Order" (Hurley, D.R., J.) "ordered", "dated" and "filed" on March 31, 2009, and "entered" on April 3, 2009 in this action and each and every part thereof.

/s/ Kevin G. Chesney
KEVIN G. CHESNEY
31 Ivy Place
Valley Stream NY 11581
516-284-7043

Date: April 28, 2009

NOTICE OF APPEAL

****

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

Kevin G. Chesney and Lorraine Chesney, Plaintiff-Appellant, – against – Valley Stream Union Free School District No. 24, et al., Defendant-Respondent.	NOTICE OF APPEAL (Filed Apr. 28, 2009) Docket No. 05cv5106 (ETB)(DRH)

Notice is hereby given that Kevin G. Chesney and Lorraine Chesney hereby appeal to the United States Court of Appeals for the Second Circuit from the entire docket in the within action; included but not limited to "Order" ECF # 110 dated 1/16/2009 (Hurley, D.R., J.); Unnumbered "Order" (Hurley, D.R, J.) docketed on 2/18/2009; "Order" filed as ECF #121 on 3/31/2009 and also filed unnumbered on 3/31/2009 on the official docket (Hurley, D.R., J.); the "Memorandum and Order" (Hurley, D.R., J.) "ordered", "dated" and "filed" on March 31, 2009 as ECF #124, and "entered" on April 3, 2009; the "Order re 127 letter MOTION to vacate #124, etc." (Hurley, D.R., J.) filed on ECF docket without number on April 16, 2009; in this action and each and every part thereof.

Plaintiff also seeks immediate referral of this case and docket tampering to FBI.

/s/ Kevin G. Chesney
KEVIN G. CHESNEY
31 Ivy Place
Valley Stream NY 11581

Date: April 28, 2009 516-284-7043

United States District Court

Eastern District of New York

_____x

Kevin Chesney and
Lorraine Chesney,

Plaintiffs-appellants.

– against –

Valley Stream Union
Free School District,
Et al.,

Defendant-appellees.

_____x

NOTICE OF Second
SUBSEQUENT APPEAL

CV-05-5106 (ETB) (DRH)

Ct. Appeals No. 09-1824-cv

Sirs:

PLEASE TAKE NOTICE, that plaintiffs file this subsequent appeal to appeal from the Memorandum and Orders dated May 7, 2009 (ECF135), May 14, 2009 (ECF 136), the Judgment filed May 15, 2009 (ECF 137) and each and every part thereof.

Dated: Valley Stream, New York
May 17, 2009

/s/ Kevin G. Chesney
Kevin G. Chesney and
Lorraine Chesney

Plaintiffs-Appellants

31 Ivy Place

516-284-7043

United States District Court
Eastern District of New York

Kevin Chesney and
Lorraine Chesney,

Plaintiffs-appellants.

– against –

Valley Stream Union
Free School District #24,
Et al.,

Defendant-appellees.

**CORRECTED/
AMENDED NOTICE
OF APPEAL**

(Filed May 27, 2009)

CV-05-5106 (ETB) (DRH)
Ct. Appeals No. 09-1824-cv

Sirs:

Please take notice, that plaintiffs-appellants file this corrected/amended appeal to the United States Court of Appeals for the second circuit from the entire (certified) docket dated April 30, 2009 and copy of docket dated April 3, 2009 in the within action; included but not limited to three entrees unnumbered and "**dated**" November 21, 2005 on (certified) copy of docket dated April 30, 2009. Two entries unnumbered and "**dated**" November 21, 2005 unnumbered on copy of docket "**dated**" April 3, 2009. (ECF 6) "**dated**" November 22, 2005, "order" by (ETB) and "**entered**" and bounced to Ms. Pollack, my attorney on December 5, 2005, fourteen days later! (EFC 9) "**dated**" December 20, 2005, "**modified**" on January 3, 2006 and "**entered**" and bounced to Ms. Pollack on December 20, 2005? (ECF 86) "**order**" (ETB) "**dated**"

November 2, 2007 and "**entered**" November 7,2007 and bounced to Ms. Pollack on November 7,2007? (ECF 90) "**dated**" February 21, 2008, exhibit #2, tampered time sheets, has been removed from the docket. (ECF 110) "**order**" (DRH) "**dated**" January 16, 2009. Unnumbered "**order**" (DRH) docketed on February 18, 2009. (ECF 121) "**order**" filed on March 31, 2009, and also filed unnumbered on March 31, 2009 on the official docket (DRH). The "**Memorandum and Order**" (DRH) "**ordered**", "**dated**" **and** "**filed**" on March 31, 2009 as (ECF 124), and "**entered**" **and** "**bounced**" to plaintiffs on April 3, 2009. "**Order**" regarding (ECF 127) letter motion to vacate (ECF 124) etc. (DRH), "**filed**" on ECF docket "**unnumbered**" on April 16, 2009. "**Memorandum and Orders**", (ECF 135) May 7, 2009, (ECF 136) May 14, 2009, (ECF 137), the judgement "**filed**" and "**entered**" prematurely on May 15, 2009. In this action and each and every part thereof, plaintiffs also seek immediate referral of this case, docket fraud and tampering to the F.B.I.

Dated: Valley Stream, NY
May 26, 2009

/s/ Kevin Chesney

/s/ Lorraine Chesney

Kevin Chesney and
Lorraine Chesney

Plaintiffs-Appellants

31 Ivy Place

516-284-7043

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Saratoga Springs, NY 12866
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Fax # 518-207-1901 or 718-967-4843

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	7/13/2009	13695 U

Kevin G. Chesney **PAID**
31 Ivy Place
Valley Stream, NY 11581
516-284-7043

Invoice

PREPARED BY: K Jones

JUDGE:

REMARKS: Hourly HEARING DATE 1/26/2007

RE: EDNY

DC#: DATE ORDERED 7/13/2009

CASE NAME	CASE NO.	PAGES	PER PAGE	AMOUNT
Chesney v Valley Stream	05-CV-5106			
1/26/07		8	7.98	63.84
10/16/07		6	7.98	47.88
11/2/07		22	7.98	175.56

Total Due $287.28

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ANNOTATED RECORD ON APPEAL APPEAL

U.S. District Court
Eastern District of New York (Central Islip)
CIVIL DOCKET FOR CASE
#: 2:05-cv-05106-DRH-ETB
Internal Use Only

Chesney et al v. Valley Stream Union Free School District No. 24 et al
Assigned to: Senior-Judge Denis R. Hurley
Referred to: Magistrate-Judge E. Thomas Boyle
Demand: $26,000,000
Case in other court: Supreme Court-County of Nassau, 05-09454
Cause: 28:1441 Petition for Removal – Employment Discrim

Date Filed: 11/01/2005
Date Terminated: 05/15/2009
Jury Demand: Both
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Kevin G. Chesney represented by

Kevin G. Chesney
31 Ivy Place
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TERMINATED: 01/16/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Lorraine Chesney represented by **Lorraine Chesney**
PRO SE

Ruth M. Pollack
(See above for address)
TERMINATED: 01/16/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

A True Copy Attest
DATED
JUL 31, 2009

ROBERT C.
HEINEMANN
BY s/ illegible
DEPUTY CLERK

V.

* * *

Exhibit Exhibits #1-8 fraud and tampered dockets) (Chesney, Kevin) Modified on 4/14/2009 (Fagan, Linda). (Entered: 04/13/2009)

04/13/2009 • 128 Letter *responding to plaintiffs' correspondence* by Edward M. Fale, Lisa K. Conte, Charles Broceaur, Stephen Haramif, Joseph Conrad, Carole Meaney, Henrietta Carbonaro, Paul DePace, Anthony Ladevaio, Frank Nuara, Lawrence Trogel, Valley Stream Union Free School

District No. 24, Valley Stream Union Free School District No. 24 Board of Education (Feldman, Michelle) (Entered: 04/13/2009)

04/13/2009 • Motions terminated, docketed incorrectly: 127 Letter MOTION to Vacate 124 Memorandum & Opinion, Order, 121 Letter, filed by Kevin G. Chesney, Lorraine Chesney. (The document should have been filed as a LETTER application, and the Court will address the document as such. All corrections have been made.) (Fagan, Linda) (Entered: 04/14/2009)

04/16/2009 • ORDER re 127 Letter MOTION to Vacate 124 Memorandum & Opinion,,, Order,, 121 Letter, filed by Kevin G. Chesney, Lorraine Chesney: Defendants are directed to serve and file their opposition, if any, to Plaintiff's April 13, 2009 application on or before April 24, 2009. Ordered by Senior Judge Denis R. Hurley on 4/16/2009. (Gapinski, Michele) (Entered: 04/16/2009)

04/24/2009 • 129 RESPONSE to Motion re 127 Letter MOTION to Vacate 124 Memorandum & Opinion,,, Order,, 121 Letter, *Oppositon* filed by Edward M. Fale, Lisa K. Conte, Charles Broceaur, Stephen Haramif, Joseph Conrad, Carole Meaney, Henrietta Carbonaro, Paul DePace, Anthony Ladevaio,

Frank Nuara, Lawrence Trogel, Valley Stream Union Free School District No. 24, Valley Stream Union Free School District No. 24 Board of Education. (Feldman, Michelle) (Entered: 04/24/2009)

04/26/2009 • 130 Letter *responding to plaintiff's 4/13/09 letter* by Edward M. Fate, Lisa K. Conte, Charles Broceaur, Stephen Haramif, Joseph Conrad, Carole Meaney, Henrietta Carbonaro, Paul DePace, Anthony Ladevaio, Frank Nuara, Lawrence Trogel, Valley Stream Union Free School District No. 24, Valley Stream Union Free School District No. 24 Board of Education (Stern, Steven) (Entered: 04/26/2009)

04/28/2009 • 131 NOTICE OF APPEAL as to Order, 124 Memorandum & Opinion,,, Order,, by Kevin G. Chesney, Lorraine Chesney. Filing fee $ 455. Appeal Record due by 7/31/2009. (Chesney, Kevin) (Entered: 04/28/2009)

04/28/2009 • 132 AFFIDAVIT/DECLARATION in Support re 80 Letter MOTION for Extension of Time to Complete Discovery *in accordance with Proposed Discovery Schedule*, 94 Supplemental MOTION to Reopen Case *NOTE RE: Rule 8 (Supplement to Reply)*, 99 Fully Briefed MOTION for Summary Judgment,

60 MOTION to Dismiss, 24 Second MOTION for Extension of Time to File Response/Reply *re: Local 74 motion for judgment on the pleadings*, 37 Letter MOTION for Extension of Time to File Response/ Reply as to 18 MOTION for Judgment on the Pleadings, 22 Letter, 35 Amended MOTION to Dismiss, 33 Affidavit in Opposition, 32 Memorandum in Opposition, 34 Reply to Response to Motion,, 20 Letter MOTION for Extension of Time to File Response/Reply as to 18 MOTION for Judgment on the Pleadings, 22 Letter, 35 Amended MOTION to Dismiss, 33 Affidavit in Opposition, 32 Memorandum in Opposition, 34 Reply to Response to Motion,, 20 Letter MOTION for Extension of Time to File Response/ Reply as to 18 MOTION for Judgment on the Pleadings, 22 Letter, 35 Amended MOTION to Dismiss, 33 Affidavit in Opposition, 32 Memorandum in Opposition, 34 Reply to Response to Motion,, 20, 29 Notice of MOTION to Dismiss, 35 Amended MOTION to Dismiss, 5 First MOTION for Extension of Time to File Answer *and file motion to dismiss*, 109 Letter MOTION to Amend/Correct/Supplement 86 Set Hearings,, 85 Pretrial Conference –

Final, Set Hearings,, 84 Order, *Correct ECF Docket entries to reflect proceedings actually held and to acknowledge that discovery was never certified as closLetter MOTION to Amend/Correct/ Supplement* 86 *Set Hearings*, 85 *Pretrial Conference – Final, Set Hearings,,* 84 *Order, Correct ECF Docket entries to reflect proceedings actually held and to acknowledge that discovery was never certified as clos*, 108 *Letter MOTION to Substitute Attorney*, 48 *First MOTION for Extension of Time to File Motion to Dismiss*, 10 *Letter MOTION for Extension of Time to File Response/Reply as to Letter*, 6 *Order,, Set Hearings,,* 4 *Notice of Appearance*, 7 *LetterLetter MOTION for Extension of Time to File Response/Reply as to 3 Letter*, 6 *Order,, Set Hearings,,* 4 *Notice of Appearance*, 7 *LetterLetter MOTION for Extension of Time to File Response/Reply as to* 3 *Letter*, 6 *Order,, Set Hearings,,* 4 *Notice of Appearance*, 7 *Letter*, 82 *Letter MOTION to Compel Plaintiffs to Respond to Discovery*, 97 *Letter MOTION for Extension of Time to File Motions and to Modify Briefing Schedule*, 83 *Emergency MOTION to Adjourn Conference Due to*

Injury of Counsel for Plaintiff, 127 *Letter MOTION to Vacate* 124 *Memorandum & Opinion,,, Order,,* 121 *Letter,,* 98 *Letter MOTION for Extension of Time to File Response/ Reply,* 111 *Supplemental MOTION to Amend/Correct/Supplement ECF Docket (with typographical errors noted on letter* 109*),* 79 *Joint MOTION for Extension of Time to Complete Discovery,* 55 *Letter MOTION for Extension of Time to File Response/Reply Re: Civil Service Rule 12 Application,* 11 *Letter MOTION to Dismiss (Request to file),* 101 *Letter MOTION for Extension of Time to File Response/Reply as to* 89 *Letter, RE: Defendants Answer to Plaintiff's Motion to File Amended ComplaintLetter MOTION for Extension of Time to File Response/Reply as to* 89 *Letter, RE: Defendants Answer to Plaintiff's Motion to File Amended Complaint,* 18 *MOTION for Judgment on the Pleadings,* 14 *Letter MOTION to Disqualify Counsel for defendant Local #74 and for conference re: other relief,* 59 *MOTION to Dismiss,* 49 *First MOTION for Judgment on the Pleadings pursuant to Fed. R. Civ. P. 12(c),* 9 *Letter MOTION for Leave to File Excess*

Pages in memorandum of law in support of motion to dismiss, 43 Cross MOTION to Disqualify Counsel for defendant Local 74 SEIU, 63 Emergency MOTION for Extension of Time to File Appeal of Memorandum and Order of Court in Reply filed by Kevin G. Chesney, Lorraine Chesney. (Attachments: # 1 Affidavit affidavit page3) (Chesney, Kevin) (Entered: 04/28/2009)

04/28/2009 • 133 Subsequent NOTICE OF APPEAL as to 6 Order, Set Hearings, 87 Order on Motion to Compel, 124 Memorandum & Opinion, 40 Order, 114 Order, 84 Order, 78 Order on Motion to Dismiss, 77 Scheduling Order, 74 Scheduling Order, 62 Order on Motion for Judgment on the Pleadings, Order on Motion to Dismiss, 96 Order, 106 Scheduling Order, 39 Scheduling Order, 110 Order, 95 Scheduling Order, 56 Scheduling Order, by Kevin G. Chesney, Lorraine Chesney. (Duong, Susan) (Entered: 04/29/2009)

04/29/2009 • Incorrect Case/Document/Entry Information. Docket# 133-Notice of Appeal has been deleted and redocketed as Subsequent Notice of Appeal. (Duong, Susan) (Entered: 04/29/2009)

04/29/2009 •	Electronic Index to Record on Appeal sent to US Court of Appeals. For docket entries without a hyperlink, contact the court and we'll arrange for the document(s) to be made available to you. 129 Response to Motion, 80 Motion for Extension of Time to Complete Discovery, 94 Motion to Reopen Case, 60 Motion to Dismiss, 24 Motion for Extension of Time to File Response/Reply, 37 Motion for Extension of Time to File Response/Reply, 29 Motion to Dismiss, 35 Motion to Dismiss, 68 Notice of Appearance, 44 Response to Motion, 57 Notice of Appearance, 42 Affidavit in Opposition to Motion, 27 Letter, 5 Motion for Extension of Time to File Answer, 109 Motion to Amend/Correct/ Supplement, 93 Reply in Support, 108 Motion to Substitute Attorney, 104 Response in Opposition to Motion, 30 Affidavit in Support, 58 Notice of Appearance, 26 Letter, 23 Letter, 40 Order, 73 USCA Mandate, 107 Certificate of Counsel, 102 Memorandum in Opposition, Affidavit in Opposition to Motion, 76 Set Deadlines/Hearings, Pretrial Conference – Initial, 115 Letter, 82 Motion to Compel, 72 Letter, 50 Affidavit in Support of Motion, 97

Motion for Extension of Time to File, 125 Letter, 132 Affidavit in Support of Motion, 127 Motion to Vacate, 78 Order on Motion to Dismiss, 70 Affidavit, 67 Letter, 77 Scheduling Order, 36 Reply in Support, 98 Motion for Extension of Time to File Response/Reply, 16 Letter, 8 Amended Complaint, 47 Letter, 128 Letter, 116 Letter, 41 Letter, 111 Motion to Amend/ Correct/Supplement, 79 Motion for Extension of Time to Complete Discovery, 55 Motion for Extension of Time to File Response/Reply, 3 Letter, 101 Motion for Extension of Time to File Response/Reply, 49 Motion for Judgment on the Pleadings, 65 Letter, 113 Letter, 96 Order, 106 Scheduling Order, 100 Letter, 4 Notice of Appearance, 121 Letter, 69 Answer to Amended Complaint, 43 Motion to Disqualify Counsel, 17 Affidavit of Service, 38 Letter, 15 Letter, 54 Reply to Response to Motion, 110 Order, 25 Letter, 28 Letter, 133 Subsequent Notice of Appeal, 112 Letter, 33 Affidavit in Opposition, 99 Motion for Summary Judgment, 1 Notice of Removal, 13 Letter, 66 Certificate of Counsel, 51 Memorandum in Support, 91 Letter, 75 Report of Rule 26(f) Planning Meeting, 103

Affidavit, 105 Letter, 32 Memorandum in Opposition, 90 Affidavit, 64 Letter, 92 Letter, 86 Set Hearings, 120 Letter, 6 Order, Set Hearings, 12 Response in Opposition to Motion, 46 Letter, 87 Order on Motion to Compel, 34 Reply to Response to Motion, 48 Motion for Extension of Time to File, 124 Memorandum & Opinion, 52 Affidavit in Opposition to Motion, 71 Letter, 123 Letter, 88 Letter, 131 Notice of Appeal, 114 Order, 7 Letter, 85 Pretrial Conference – Final, Set Hearings, 20 Affidavit in Support of Motion, 10 Motion for Extension of Time to File Response/Reply, 84 Order, 83 Motion to Adjourn Conference, 130 Letter, 74 Scheduling Order, 62 Order on Motion for Judgment on the Pleadings, Order on Motion to Dismiss, 89 Letter, 118 Letter, 31 Memorandum in Support, 119 Letter, 11 Motion to Dismiss, 21 Letter, 19 Memorandum in Support, 2 Answer to Complaint, 18 Motion for Judgment on the Pleadings, 14 Motion to Disqualify Counsel, 59 Motion to Dismiss, 117 Letter, 122 Letter, 9 Motion for Leave to File Excess Pages, 61 Letter, 126 Letter, 53 Memorandum in Opposition, 45 Response to

Motion, 22 Letter, 39 Scheduling Order, 63 Motion for Extension of Time to File, 95 Scheduling Order, 56 Scheduling Order, 81 Response to Motion, (Duong, Susan) (Entered: 04/29/2009)

04/30/2009 • 134 USCA Appeal Fees received $ 455 receipt number 29702 re 133 Subsequent Notice of Appeal, filed by Kevin G. Chesney, Lorraine Chesney, 131 Notice of Appeal filed by Kevin G. Chesney, Lorraine Chesney. (Duong, Susan) (Entered: 04/30/2009)

04/30/2009 • Supplemental Electronic Index to Record on Appeal sent to US Court of Appeals. For docket entries without a hyperlink, contact the court and we'll arrange for the document(s) to be made available to you. 134 USCA Appeal Fees (Duong, Susan) (Entered: 04/30/2009)

05/07/2009 • 135 ORDER re 127 Letter MOTION to Vacate 124 Memorandum & Opinion,: Plaintiff's letter application dated April 13, 2009 is denied. See attached Memorandum & Order. Ordered by Senior Judge Denis R. Hurley on 5/7/2009. (Hurley, Denis) (Entered: 05/07/2009)

05/14/2009 • 136 ORDER re 102: Motion to Amend filed by Kevin G. Chesney: For the

reasons set forth in the accompanying Memorandum & Order, Plaintiffs motion for leave to file the second amended complaint is denied. The Clerk of Court shall close this case on or after May 15, 2009 (the date on which the Court's March 31, 2009 Order granting summary judgment on the COBRA claim becomes effective). Ordered by Senior Judge Denis R. Hurley on 5/14/2009. (Hurley, Denis) (Entered: 05/14/2009)

05/15/2009 • 137 CLERK'S JUDGMENT; That Pltffs take nothing of Defts; that Pltffs' motion for leave to file the second amended complaint is denied; that Defts' motion for summary judgment is granted; and that this case is hereby closed. (Signed by: Catherine Vukovich, Deputy Clerk, on 5/15/09.) c/m c/ecf (Fagan, Linda) (Entered: 05/15/2009)

05/17/2009 • 138 First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se* by Kevin G. Chesney, Lorraine Chesney. (Attachments: # 1 Supplement plaintiff P. 4 of affidavit reconsideration, # 2 Exhibit Certified copy of ECF docket in case dated 4/30/09, # 3 Exhibit Part 2 of Exhibit "A", docket for case dated

4/3/09, first part, # 4 Exhibit part 2 of Exhibit "A", docket sheet in case dated 4/3/09) (Chesney, Kevin) (Entered: 05/17/2009)

05/17/2009 • 139 Subsequent NOTICE OF APPEAL 135 ORDER, 136 ORDER, 137 CLERK'S JUDGMENT by Kevin G. Chesney, Lorraine Chesney *(second)*. (Chesney, Kevin) Modified on 5/18/2009 (Duong, Susan). (Entered: 05/17/2009)

05/18/2009 • Supplemental Electronic Index to Record on Appeal sent to US Court of Appeals. For docket entries without a hyperlink, contact the court and we'll arrange for the document(s) to be made available to you. 136 Order, 139 Subsequent Notice of Appeal, 137 Clerk's Judgment, 135 Order, 138 Motion for Reconsideration, (Duong, Susan) (Entered: 05/18/2009)

05/22/2009 • ORDER: On May 17, 2099, Plaintiff filed a motion entitled "First Motion for Reconsideration." (See Dkt. No. 138) The Court hereby establishes the following briefing schedule for said motion: Defendants shall serve and file opposing papers on or before June 5, 2009; Plaintiff shall serve and file reply papers, if any, on or before June 15, 2009. Ordered by Senior Judge

Denis R. Hurley on 5/22/2009. (Gapinski, Michele) (Entered: 05/22/2009)

05/27/2009 • 140 Subsequent CORRECTED/AMENDED NOTICE OF APPEAL as to Order, Order, Order, Order, Order, Order, Order on Motion for Extension of Time to Complete Discovery, 6 Order, Set Hearings, Order, 87 Order on Motion to Compel, Order, 124 Memorandum & Opinion, 135 Order, Order, 40 Order, 114 Order, Order on Motion for Extension of Time to File Response/Reply, Order, Order, Order on Motion for Extension of Time to Complete Discovery, 136 Order, 84 Order, 78 Order on Motion to Dismiss, 77 Scheduling Order, 74 Scheduling Order, Order, 62 Order on Motion for Judgment on the Pleadings, Order on Motion to Dismiss, 137 Clerk's Judgment, Order on Motion to Substitute Attorney, Order, Order, Order, Order on Motion for Extension of Time to File, Order, Order, Order, 96 Order, Order, 106 Scheduling Order, Order, Order, 39 Scheduling Order, Order on Motion to Amend/Correct/Supplement, Order, 110 Order, 95 Scheduling Order,Order, 56 Scheduling Order, by Kevin G. Chesney, Lorraine Chesney. (Duong, Susan) (Entered: 05/27/2009)

05/27/2009 • Supplemental Electronic Index to Record on Appeal sent to US Court of Appeals. For docket entries without a hyperlink, contact the court and we'll arrange for the document(s) to be made available to you. 140 Subsequent Corrected/ Amended Notice of Appeal. (Duong, Susan) (Entered: 05/27/2009)

06/05/2009 • 141 MEMORANDUM in Opposition re 138 First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se*First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se* filed by Edward M. Fale, Lisa K. Conte, Charles Broceaur, Stephen Haramif, Joseph Conrad, Carole Meaney, Henrietta Carbonaro, Paul DePace, Anthony Ladevaio, Frank Nuara, Lawrence Trogel, Valley Stream Union Free School District No. 24, Valley Stream Union Free School District No. 24 Board of Education. (Stern, Steven) (Entered: 06/05/2009)

06/05/2009 • 142 MEMORANDUM in Opposition re 138 First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se*First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se* filed by Edward

M. Fale, Lisa K. Conte, Charles Broceaur, Stephen Haramif, Joseph Conrad, Carole Meaney, Henrietta Carbonaro, Paul DePace, Anthony Ladevaio, Frank Nuara, Lawrence Trogel, Valley Stream Union Free School District No. 24, Valley Stream Union Free School District No. 24 Board of Education. (Feldman, Michelle) (Entered: 06/05/2009)

06/13/2009 • 143 REPLY in Support re 138 First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se*First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se* filed by Kevin G. Chesney, Lorraine Chesney. (Attachments: # 1 Affidavit in Support Page 5) (Chesney, Kevin) (Entered: 06/13/2009)

06/13/2009 • 144 REPLY in Support re 138 First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se*First MOTION for Reconsideration re 135 Order, 136 Order, 137 Clerk's Judgment, *pro se signature page 5* filed by Kevin G. Chesney, Lorraine Chesney. (Chesney, Kevin) (Entered: 06/13/2009)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]
CHESNEY VS. VALLEY
STREAM U.F.S.D. No. 24 et. AL.

Docket Number(s): 05-CV-5106 (DRH)(ETB)
09-1824-cv 2ND CIRCUIT

Motion for: ORDER TO SEQUESTER COURT FILE OF EDNY, TURNOVER ORIGINAL SCHOOL DISTRICT RECORDS, CANCEL JULY 31, 2009 DATE.

Set forth below precise, complete statement of relief sought:

A) SEQUESTER ORDER FOR ORIGINAL EDNY CASE FILE

B) CANCELLATION OF 7/31/09 DATE

C) TURNOVER OF ORIGINAL COBRA/PAYROLL RECORDS OF Chesney (TAMPERED)

D) INSTITUTION OF CRIMINAL INVESTIGATION

MOVING PARTY: Kevin G. Chesney and Ruth M. Pollack

☒ Plaintiff ☐ Defendant
☒ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: RUTH M. POLLACK ATTORNEY

[name of attorney, with firm, address, phone number and e-mail]

21 WEST SECOND STREET Ste 13
POST OFFICE BOX 120 (*REQUIRED)
Riverhead, N.Y. 11901
631-591-3160
ruthmpollack@yahoo.com

OPPOSING PARTY: VALLEY STREAM UFSD No. 24., EDYN
LAMB BARNOSKY LLP
STERN SOKOLOFF LLP

OPPOSING ATTORNEY
[Name]: STEVEN STERN, ESQ.

[name of attorney, with firm, address, phone number and e-mail]

STERN SOKOLOFF LLP
355 Post Avenue, Ste. 201
WESTBURY, NY 11590
516-334-4500

Court-Judge/Agency appealed from: EDNY (Hurley, Boyle)

Please check appropriate boxes:

Has **consent** of opposing counsel:
A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No

Is **oral argument** requested? ☒ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been set? ☐ Yes ☒ No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☒ No

Has this relief been previously sought in this Court? ☐ Yes ☒ No

Requested return date and explanation of emergency:

_____

_____

Has service been effected? ☒ Yes ☐ No
[Attach proof of service]

Signature of Moving Attorney:

/s/ Ruth M Pollack Date: 7/27/09

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED**

DENIED
FOR THE COURT
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____ By: _____

Form T-1080 (Revised 10/31/02).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]
CHESNEY VS. VALLEY STREAM U.F.S.D. No. 24 ET AL.

Docket Number(s): 05-CV-5106 (DRH)(ETB)
09-1824CV (2ND CIR)

Motion for: DEATH KNELL SANCTIONS AND RELATED RELIEF

Set forth below precise, complete statement of relief sought:

1) ORDER GRANTING DEATH KNELL JUDGMENT AND DEFAULT JUDGMENT.

2) ORDER GRANTING SEQUESTERING OF COURT FILE

3) ORDER FOR CRIMINAL INVESTIGATION INTO DESTRUCTION AND TEMPERING

4) TURNOVER OF PLT-APPELLANTS WORK RECORDS FOR FORENSIC ANALYSIS

5) SUCH OTHER AVAILABLE RELIEF AS IS PROPER

MOVING PARTY: CHESNEY/POLLACK

☐ Plaintiff ☐ Defendant
☒ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: RUTH M. POLLACK, ATTY

[name of attorney, with firm, address, phone number and e-mail]

21 WEST SECOND STREET – Ste. 13
POST OFFICE BOX 120
RIVERHEAD, N.Y. 11901
631-591-3160
631-591-3162
ruth@ruthmpollackesq.com

OPPOSING PARTY: VALLEY STREAM UFSD No. 24., EDNY

OPPOSING ATTORNEY
[Name]: STEVEN STERN, ESQ.

[name of attorney, with firm, address, phone number and e-mail]

Stern Sokoloff LLP
355 Post Avenue, Ste. 201
WESTBURY, NY 11590
516-334-4500
sstern@sokoloffstern.com

Court-Judge/Agency appealed from: EDNY (Hurley, Boyle)

Please check appropriate boxes:

Has **consent** of opposing counsel:
A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No

Is **oral argument** requested? ☒ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been set? ☐ Yes ☒ No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☒ No

Has this relief been previously sought in this Court? ☒ Yes ☐ No
Some Has

Requested return date and explanation of emergency:

Emergency is continued spoliation of case and docked – Statutory Return Date is Acceptable

Has service been effected? ☒ Yes ☐ No
[Attach proof of service]

Signature of Moving Attorney:

/s/ Ruth M Pollack Date: 9/27/09

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED**

DENIED
FOR THE COURT
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____ By: _____

Form T-1080 (Revised 10/31/02).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]

KEVIN CHESNEY AND
LORRAINE CHESNEY
– vs. –
PLT-Appellants
VALLEY STREAM U.F.S.D. No.
24 ET AL.
DEFT-Respondent

Docket Number(s): 09-1824-CV

Motion for: To Strike / DISQUALIFY LAMB &
BARNOSKY LLP

Set forth below precise, complete statement of relief sought:

ORDER Striking All Submissions to this Court by
Lamb & Barnosky LLP and disqualify Firm from
Appeal, Fees & Costs of this Motion

MOVING PARTY: CHESNEYS

☒ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: RUTH M. POLLACK, ESQ

[name of attorney, with firm, address, phone number and e-mail]

21 WEST SECOND ST. – Ste. 13
POST OFFICE BOX 120 (REQUIRED)
RIVERHEAD, N.Y. 11901
631-591-3160
ruth@ruthmpollackesq.com

OPPOSING PARTY: VALLEY STREAM UFSD No. 24., et. al.

OPPOSING ATTORNEY [Name]: SOKOLOFF STERN c/o STEVEN STERN, ESQ.

[name of attorney, with firm, address, phone number and e-mail]

355 Post Avenue Ste. 201
WESTBURY, NY 11590
516-334-4500
sstern@sokoloffstern.com

Court-Judge/Agency appealed from: EDNY ISLIP (Hurley, D., Boyle, E.T.)

Please check appropriate boxes:

Has **consent** of opposing counsel:
A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No

Is **oral argument** requested? ☒ Yes ☐ No

(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been set? ☐ Yes ☒ No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☒ No

Has this relief been previously sought in this Court? ☒ Yes ☐ No

Requested return date and explanation of emergency:

ASAP – Firm is committing a Fraud upon the Court again & causing expense & delay to PTF.

Has service been effected? ☒ Yes ☐ No
[Attach proof of service]

Signature of Moving Attorney:

/s/ Ruth M Pollack Date: 10/29/09

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED**

DENIED
FOR THE COURT
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____ By: _____

Form T-1080 (Revised 10/31/02).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]

KEVIN G. CHESNEY &
LORRAINE CHESNEY

– v. –

VALLEY STREAM U.F.S.D. No. 24
ET AL.

Docket Number(s): 09-1824-CV

Motion for: EMERGENCY STAY OF APPEAL AND DECISIONS ON OUTSTANDING T-1080 MOTIONS (3)

Set forth below precise, complete statement of relief sought:

EMERGENCY MOTION FOR IMMEDIATE STAY OF APPEAL Pending Criminal investigation into docket Fraud & File destruction, conference with Judges

MOVING PARTY: CHESNEYS

☒ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: RUTH M. POLLACK, ESQ

[name of attorney, with firm, address, phone number and e-mail]

21 WEST Second Street, Ste. 13
POST OFFICE BOX 120
RIVERHEAD, N.Y. 11901

631-591-3160
ruth@ruthmpollackesq.com

OPPOSING PARTY: VALLEY STREAM UFSD 24

OPPOSING ATTORNEY
[Name]: Sokoloff Stern LLP

[name of attorney, with firm, address, phone number and e-mail]

355 Post Avenue, Ste. 201
Westbury, NY 11590
(516) 334-4500
sstern@sokoloffstern.com

Court-Judge/Agency appealed from: EDNY Islip (DRH) (EBT)

Please check appropriate boxes:

Has **consent** of opposing counsel:
A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No

Is **oral argument** requested? ☒ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been set? ☐ Yes ☒ No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☒ No

Has this relief been previously sought in this Court? ☐ Yes ☒ No

Requested return date and explanation of emergency:

By 11/12/09 due to ongoing destruction & tampering of docket and the in courts

Has service been effected? ☒ Yes ☐ No
[Attach proof of service]

Signature of Moving Attorney:

/s/ Ruth M Pollack Date: 11/4/09

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED**

DENIED
FOR THE COURT
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____ By: _____

Form T-1080 (Revised 10/31/02).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
40 Foley Square, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]
CHESNEY v. VALLEY STREAM U.F.S.D. NO 24 ET AL. PRO SE

Docket Number(s): 05 cv 5106 (DRH)(ETB); 09CV1824

Motion for: STAY PENDING WRIT OF MANDAMUS AND WRIT OF CERTIORARI TO U.S.S.CT.

Set forth below precise, complete statement of relief sought:

PLAINTIFF-APPELLANTS SEEK IMMEDIATE STAY OF WITHIN APPEAL PENDING RESOLUTION OF ITS ANTICIPATED WRITS OF MANDAMUS AND CERTIORARI TO THE UNITED STATES SUPREME COURT BASED ON IMPOSSIBILITY OF BRIEFING WITHIN APPEAL DUE TO DESTROYED RECORD AND DOCKET AND FRAUDULENT ORDER SIGNED BY "OPERATIONS ANALYST".

MOVING PARTY: CHESNEYS

☑ Plaintiff ☐ Defendant
☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: RUTH M. POLLACK, ESQ.

[name of attorney, with firm, address, phone number and e-mail]

21 WEST SECOND STREET, STE. 13
POST OFFICE BOX 120 (REQUIRED)
RIVERHEAD, NY 11901
631-591-3160 RUTH@RUTHPOLLACKESQ.COM

VALLEY STREAM UFSD NO. 24

OPPOSING PARTY: ET AL. PRO SE

OPPOSING ATTORNEY: NONE – PRO SE
EMAIL COURTESY COPY ONLY:
STERN SOKOLOFF, LLP
355 POST AVENUE, SUITE 201
WESTBURY, NY 11590
516-334-4500 SSTERN@SOKOLOFFSTERN.COM

Court-Judge/Agency appealed from: E.D.N.Y. (HURLEY, J.) (E.T. BOYLE, M.J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☐ Yes ☑ No (explain): _____

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

Is oral argument on motion requested? ☑ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No
If yes, enter date: _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☑ No

Has this relief been previously sought in this Court? ☑ Yes ☐ No

Requested return date and explanation of emergency:
FEBRUARY 8, 2010 OR SUCH DATE SET BY THE COURT.

Has service been effected? ☑ Yes ☐ No
[Attach proof of service]

Signature of Moving Attorney:

/s/ Ruth M Pollack **Date:** 1/31/2010

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED.**

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,
Clerk of Court

By: _____

Date: _____

FORM T-1080

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]

Kevin G Chesney, et al.

v.

Valley Stream U.F.S.D. No. 24 et al.

Docket Number(s): 05 CV 5106 (DRH)(ETB)
09 1824 CV.

Motion for: Stay, Sanctions, Default, Judgment, Conference, Pending Appeal

Set forth below precise, complete statement of relief sought:

1) Stay of Appeal due to destroyed file, confirmed by CA2.
2) Proper processing of this Form re: FRAP
3) Judgment in favor of PTF-Appellants
4) Criminal Investigation

MOVING PARTY: Chesney

☒ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Ruth M. Pollack Esq.
[name of attorney, with firm, address, phone number and e-mail]

21 West Second St. Ste. 13
P.O. Box 120

Riverhead, NY 11901
631-591-3160 (Tel) ruth@ruthpollackesq.com

OPPOSING PARTY: Valley Stream UFSD #24 et al

OPPOSING ATTORNEY
[Name]: Pro Se

[name of attorney, with firm, address, phone number and e-mail]

No Notice of Appearance on File per FRAP: 12.1
Courtesy Copy on s.stern@sokoloffstern.com.

Court-Judge/Agency
appealed from: EDNY (DRH) (ETB)

Please check appropriate boxes:

Has **consent** of opposing counsel:

A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No

Is **oral argument** requested? ☒ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been set? ☐ Yes ☒ No
If yes, enter date:

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☒ Yes ☐ No

Has this relief been previously sought in this Court? ☒ Yes ☐ No

Requested return date and explanation of emergency:
Restruction of File ASAP

Confirmed as of 2/17/10 *

Has **service** been effected? ☒ Yes ☐ No
[Attach proof of service]

Signature of Moving Attorney:

/s/ Ruth M Pollack **Date:** 2/18/10

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED.**

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,
Clerk of Court

By: _____

Date: _____

FORM T-1080 (Revised 10/31/02)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]

Kevin G Chesney and
Lorraine Chesney,
Plaintiff-Appellants

-vs.-

Valley Stream U.F.S.D. No. 24, et al.
Defendant-Respondents

Docket Number(s): 09-1824-CV

Motion for: Reconsideration, Default and other Relief.

Set forth below precise, complete statement of relief sought:

1) Criminal Investigation into
Tampered & Destroyed Record
on Appeal, transcripts, 2) Reconsideration
of All Motions

MOVING PARTY: Plaintiff-App.

☒ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Ruth M. Pollack, Esq.
[name of attorney, with firm, address, phone number and e-mail]

21 West Second Second St. Ste. 13
Post Office Box 120 * Required

Riverhead, NY 11901
Tel. 631-591-3160
Fax 631-591-3162
ruth@ruthpollackesq.com

OPPOSING PARTY: Valley Stream UFSD No. 24

OPPOSING ATTORNEY [Name]: None
[name of attorney, with firm, address, phone number and e-mail]

Valley Stream UFSD No. 24 is pro se

Court-Judge/Agency appealed from: EDNY Islip (Hurley, D., Boyle E.T.)

Please check appropriate boxes:

Has **consent** of opposing counsel:

A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No

Is **oral argument** requested? 6 times ☒ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been set? ☐ Yes ☒ No
If yes, enter date: _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☒ No

Has this relief been previously sought in this Court? ☒ Yes ☐ No

Requested return date and explanation of emergency:

Has **service** been effected? ☒ Yes ☐ No
[Attach proof of service]

Signature of Moving Attorney:

/s/ Ruth M Pollack **Date:** 5/21/2010

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED.**

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,
Clerk of Court

By: _____

Date: _____

FORM T-1080 (Revised 10/31/02)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse
at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]

Kevin G Chesney & Lorraine Chesney,
-v-
Valley Stream UFSD No. 24 et al.

Docket Number(s): 09-1824-CV

Motion for: Emergency Stay of Appeal and Decisions on outstanding T-1080 Motions (3)

Set forth below precise, complete statement of relief sought:

Emergency Motion for Immediate Stay of Appeal Pending Criminal Investigation into docket fraud & file destruction, conference with Judges

MOVING PARTY: Chesneys

☒ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Ruth M. Pollack, Esq.
[name of attorney, with firm, address, phone number and e-mail]

21 West Second Street, Ste. 13
Post Office Box 120
Riverhead, N.Y. 11901

631-591-3160

ruth@ruthpollackesq.com

OPPOSING PARTY: Valley Stream UFSD24

OPPOSING ATTORNEY [Name]: Sokoloff Stern LLP
[name of attorney, with firm, address, phone number and e-mail]

355 Post Avenue, Ste. 201

Westbury, NY 11590

(516) 334-4500

sstern@sokoloffstern.com

Court-Judge/Agency appealed from: EDNY Islip (DRH) (ETB)

Please check appropriate boxes:

Has **consent** of opposing counsel:

A. been sought? ☐ Yes ☒ No
B. been obtained? ☐ Yes ☒ No

Is **oral argument** requested? ☒ Yes ☐ No
(requests for oral argument will not necessarily be granted)

Has **argument** date of appeal been set? ☐ Yes ☒ No
If yes, enter date: _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☒ No

Has this relief been previously sought in this Court? ☐ Yes ☒ No

Requested return date and explanation of emergency:
By 11/12/09 due to ongoing destruction & tampering of docket and file in courts

Has **service** been effected? ☒ Yes ☐ No
[Attach proof of service]

Signature of Moving Attorney:

/s/ Ruth M Pollack **Date:** 11/4/09

ORDER

Before: Debra Ann Livingston, *Circuit Judge*

IT IS HEREBY ORDERED that the motion by Appellants to stay the appeal and for a conference with sitting judges is DEFERRED to the panel that will determine the other pending motions.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

by /s/ Joy Fallek
Joy Fallek

(Filed Nov. 9, 2009)
Date

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DANIEL PATRICK MOYNIHAN
500 Pearl Street
New York, NY 10007

Subject to change at any time, the Bar is advised that the following is the schedule of the proposed sitting of this court:

10:00 A.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
Jan. 4-5	Feinberg, Katzmann, C.JJ., Ellis, D.J.
Jan. 6	Feinberg, Katzmann, C.JJ., Castel, D.J.
Jan. 6	Feinberg, Sack, Katzmann, C.JJ. (09-0718 & 09-90087)
Jan. 7	Sack, Katzmann, C.JJ., Chin, D.J.
Jan. 8	Sack, Katzmann, C.JJ., Sullivan, D.J.

Catherine O'Hagan Wolfe, Clerk

Dated: December 31, 2009
New York, New York

Thursday Jan. 7 10:00am

08-1134-cr	United States of America	(10)
08-4156-cr	v. Walter Carmona	(5)
	Benhur Carmona	(5)

08-4057-ag	Bahiru Barry	(10)
	v. Michael B. Mukasey	(10)
09-0248-ag	Mohammad Riaz	(10)
	v. Michael B. Mukasey	(10)
09-2006-cv	Jose Gonzalez	(10)
	v. Secretary of the U.S. Dept of HH, et al	(10)
09-1739-cv	Penguin Group (USA) Inc.	(10)
	v. American Buddha	(10)
08-3832-cv	Eugene Kennedy	(5)
	v. Manhattan Bronx Surface Transit, et al	(5)
08-3966-cv	Jag M. Kalra	(5)
	v. HSBC Bank U.S.A.	(5)

Friday Jan. 8 10:00am

**	08-4908-cv	Ronald L. Wolfson, et al	(8)
		v. Banco Central Del Paraguay, et al	(8)
	08-5073-ag	Wei Qing Wang	(10)
		v. Eric Holder	(10)
	08-2199-cr	United States of America	(10)
		v. Ira I. Bloom	(10)
	08-6091-cr	United States of America	(10)
		v. Warren Spivack	(10)
	08-3091-cv	Ajai Bhatia	On Submission
		v. City of Shelton, et al	(5)
	08-2721-cv	Isaac Stengal	(5)
		v. Bradford Black	(5)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DANIEL PATRICK MOYNIHAN
500 Pearl Street
New York, NY 10007

Subject to change at any time, the Bar is advised that the following is the schedule of the proposed sitting of this court:

10:00 A.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
Feb. 1	Katzmann, Lynch, C.JJ., Chin, D.J.
Feb. 2	Katzmann, Lynch, C.JJ., Stanceu, USCIT
Feb. 3	Jacobs, Ch. J., Calabresi, C.JJ., Droney, D.J.
Feb. 4.	Jacobs, Ch. J., Pooler, Katzmann, C.JJ.
Feb. 5.	Calabresi, Katzmann, C.JJ., Chin D.J.
1:30 P.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
Feb. 4	Katzmann, Raggi, C.JJ., Koeltl, D.J. (08-4354)
2:00 P.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
Feb. 1-2	Calabresi, Raggi, C.JJ., Cudahy, C.J.

Feb. 3	Katzmann, Raggi, C.JJ., Koeltl, D.J.
Feb. 4	Calabresi, Raggi, C.JJ., Koeltl, D.J.
Feb. 5	Pooler, Raggi, Livingston, C.JJ.

Catherine O'Hagan Wolfe, Clerk

Dated: January 28, 2010
New York, New York

Friday Feb.5 **10:00am**

	08-5920-cr	United States of America	(8)
		v. Asllan Muja	(8)
**	09-2249-ag	NLRB	(10)
	09-2591-ag	v. Matros Automated	(5)
	09-2885-ag	Electrical Construction Local 363, et al	On Submission
	08-5900-cv	Rose McCormick	(5)
		v. Secretary Shaun Donovan, et al	(5)
	09-1199-cv	Irandokht Bahrami	On Submission
		v. Mohammad Ali Saadat Kedabchi	On Submission
	08-3567-pr	Carlos Abreu	On Submission
		v. C.O. Nicholls	On Submission
	08-6228-cr	United States of America	On Submission
		v. Owen Sappleton	On Submission

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DANIEL PATRICK MOYNIHAN
500 Pearl Street
New York, NY 10007

Subject to change at any time, the Bar is advised that the following is the schedule of the proposed sitting of this court:

10:00 A.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
Feb. 22-24	Cabranes, Parker, C.JJ., Underhill, D.J.
Feb. 24	Cabranes, C.JJ., Underhill, D.J. (09-0350-cr)
Feb. 25-26	Cabranes, Parker, C.JJ., Wallach, USCIT

Catherine O'Hagan Wolfe, Clerk

Dated: February 18, 2010
New York, New York

Thursday Feb.25 10:00am

**	08-5684-cr	United States of America	On Submission
		v. Mark Lee	On Submission
	09-0622-cr	United States of America	(8)
		v. Michael Harper	(8)
	09-2289-cv	Frank R. Terreri	(7)
		v. Michael J. Astrue	(7)

09-3012-cv	Lou Ann Wetherby	(8)
	v. Michael J. Astrue	(8)
09-0836-cr	United States of America	(8)
	v. Antonio Rodriguez	(8)
09-4998-cv	A to Z Holding Company, Inc.	(8)
	v. Empire Kosher Poultry, et al	(8)

Friday Feb.26 10:00am

08-5217-cv	Pearl Robinson	On Submission
	v. Citibank South Dakota, N.A., e tal	On Submission
07-5604-cv	The Travelers Indemnity Company	On Submission
	v. Mahammed H. Kabir	On Submission
08-4554-cv	Earlyn Walker	On Submission
	v. University of Rochester	On Submission
09-1362-bk	Joseph Murphy, et al	On Submission
09-1365-cv	v. Allied World Assurance	On Submission
	Arch Insurance Company	On Submission
09-0468-pr	Thomas Duemmel	On Submission
	v. Brian Fischer, et al	On Submission
08-5080-pr	Amin Booker	On Submission
	v. John Doe, et al	On Submission
08-5541-pr	Vincent Warren	On Submission
	v. Glenn Goord, et al	On Submission

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DANIEL PATRICK MOYNIHAN
500 Pearl Street
New York, NY 10007

Subject to change at any time, the Bar is advised that the following is the schedule of the proposed sitting of this court:

10:00 A.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
May 3-4	Newman, Walker, Lynch, C.J.J.
May 4	Newman, Walker, C.J.J., (09-3195-cv)
May 5	Miner, Walker, Lynch, C.J.J.
May 6	Miner, Lynch, C.J.J. Trager, D.J.

Catherine O'Hagan Wolfe, Clerk

Dated: April 29, 2010
New York, New York

.....

Tuesday May 4 10:00am

PARKER V. TIME WARNER

09-3195-cv	Richard Lobur, et al	(10)
09-3766-cv	v. Andrew Parker, et al	(10)

.....

Tuesday May 4 10:00am

USA V. BOMBINO

10-1200-cr	United States of America	(7)
	v. Michael J. Persico	(7)

USA V. DARCO

09-1874-cr	United States of America	(5)
	v. Albert Paneque	(5)
09-1616-cv	Gabor Stein	(5)
	v. The United States of America	(5)
09-3385-cv	Theodore F. Johnson	(5)
	v. Chairman NYC Transit Authority	(5)
08-5292-cr	United States of America	On Submission
	v. Ramon Arias-Madrid	On Submission

Wednesday May 5 10:00am

**	08-4849-ag	International Brotherhood of Boilermakers	(10)
		v. National Labor Relations Board	(10)
		Brown and Root Power Manufacturing	(5)
**	08-4003-ag	International Brotherhood of Boilermakers	(10)
	08-4456-ag	McBurney Corporation	(10)
	08-4689-ag	v. National Labor Relations Board	(10)

IN RE: MARK W. SWIMELAR

	09-4419-bk	James R. Jacobs, Jr., et al	(10)
		v. Mark W. Swimelar	(10)
**	09-3203-cv	John DiPetto	On Submission
		v. U.S. Postal Service	On Submission
	09-0977-cv	Fidelis Okoi	(5)
		v. El Al Israel Airlines	(5)

08-5403-cr	United States of America	On Submission
	v. Rafael Perez	On Submission
	USA V. CINTRON	
09-2057-cr	United States of America	On Submission
	v. Jamaal Johnson	On Submission

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DANIEL PATRICK MOYNIHAN
500 Pearl Street
New York, NY 10007

COURT NOTICE

Subject to change at any time, the Bar is advised that the following is the schedule of the proposed sitting of this court:

10:00 A.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
June 7-8	Winter, Hall, C.JJ., Cedarbaum, D.J.
June 9-10	Miner, Sack, Hall, C.JJ.,
June 11	Feinberg, Sack, Hall, C.JJ.
2:00 P.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
June 9	Jacobs, Ch. J., Winter, Walker, C.JJ. (10-0413-cr)
3:00 P.M.	**Ceremonial Courtroom (9th floor) U. S. Courthouse**
June 9	Kearse, Walker, Cabranes, C.JJ. (09-3212-cv)

Catherine O'Hagan Wolfe, Clerk

Dated: June 3, 2010
New York, New York

Tuesday June 8 10:00am

	09-0688-pr	Corey Turner	(8)
		v. James Dzurenda	(8)
**	09-2380-ag	Antonio Joao Costa	On Submission
		v. Eric H. Holder, Jr.	On Submission
	09-1892-cv	Michael S. Johnson, et al	(10)
		v. Nextel Communications, Inc.	(4)
		Leeds Morelli & Brown, et al	(4)
		Bryan Mazolla, et al	(2)
	09-2704-cr	The United States of America	(8)
		v. Hayim Regensberg	(8)
	09-3247-ag	David Harris Sher, et al	(5)
		v. Commissioner of Internal Revenue	(5)

Wednesday June 9 10:00am

	09-3453-ag	Minita Baki Dashrath Patel	(8)
		v. Eric H. Holder, Jr.	(8)
		USA V. MOODY	
	08-5267-cr	United States of America	(8)
		v. Anthony L. Mitchell	(8)
	09-2146-cr	United States of America	(8)
		v. Lawrence Johnson	(8)
	09-1518-pr	Lemrey Andrews	(8)
		v. United States of America	(8)
	10-702-cv	District Lodge 26, International Association	(12)
		v. United Technologies Corp ion	(12)

08-4579-cv	Glen M. Clayborne	(5)
	v. OCE Business Services	(5)
09-3294-bk	Daniel Michaelesco, et al	(5)
	v. Molly T. Whiton	(5)

Wednesday June 9 **3:00pm**

09-3212-cv	Ideal Steel Supply Corporation	(15)
	v. Joseph & Vincent Anza, Nat'l Steel Supply	(15)

Thursday June 10 10:00am

USA V. APPLINS

07-2193-cr	United States of America	(30)
07-2194-cr	v. Charmish Singletary	(5)
07-2217-cr	Dennis Jones	(6)
07-2312-cr	Jerrawn Thomas	(6)
07-2372-cr	Gregory Thomas	(6)
07-0225-cr	William Robinson	(6)
	Ismail Pierce	(6)
	Ronnie Parnell	On Submission

USA V. LYTCH

09-2482-cr	United States of America	(8)
	v. Harvey Parrish	(8)
10-1157-cv	Fox Insurance Company	(10)
	v. Kathleen Sebelius, et al	(10)
09-4413-cv	Todd C. Bank	(8)
	v. Anne Katz, et al	(8)
09-1895-cv	Michelle Wilson	(10)
	v. Northwestern Mutual Insurance Company	(10)

08-5341-cv	Andrew R. May	(5)
	v. Policeman's Annuity and Benefit Fund	(3)
	Telik, Inc., et al	(3)
09-1186-cv	Samaad Bishop	(5)
	v. Toys R Us, et al	(3)
	John Doe, et al	(3)

6/25/2010

USCA2 Docket Sheet for 09-1824

General Docket
US Court of Appeals for the Second Circuit

Second Circuit Court of Appeals

INDIV
DISPOSED

Court of Appeals Docket #: 09-1824-cv
Nsuit : 3442 CIVIL RIGHTS-Jobs

Chesney v. Valley Stream Union Free School
District No. 24 Filed 4/29/09

Appeal from: EDNY (CENTRAL ISLIP)

Case type information:

Civil

Private

None

Lower court information:

District: 05-cv-5106

Trial Judge: Denis R. Hurley

MagJudge: E. Thomas Boyle

Date Filed: 11/01/05

Date order/judgement: 3/31/2009

Date NOA filed: 4/28/2009

Fee status: Paid

Panel Assignment:

Panel:

Date of decision: 5/5/10

Prior cases: NONE

Current cases NONE

Official Caption 1/

INDIV
DISPOSED

Docket No. [s] : 09-1824 -cv

Kevin G. Chesney, Lorraine Chesney,

Plaintiffs-Appellants,

v.

Valley Stream Union Free School District No. 24, Valley Stream Union Free School District No. 24, Edward M. Fale, Ph.D., Superintendent of Schools, in his individual and official capacity, Lisa K. Conte, Principal, Charles Broceaur, Maintenance Supervisor, in his individual and official capacity, Stephen Haramif, Custodian and Union Representative, John Does, Jane Does, the latter being personal and/or entities unknown to complainant, Joseph Conrad, President, Carole Meaney, Vice President, Henrietta Carbonaro, Paul DePace, Anthony Ladevaio, Frank Nuara, Lawrence Trogel, each in its individual and official capacity,

Defendants-Appellees.

Local 74 SEIU, Nassau County Division Civil Service Commission,

Defendants.

Authorized Abbreviated Caption 2/

Docket No. [s] : 09-1824 -cv

Chesney v. Valley Stream Union Free School District No. 24

1/ Fed. R. App. P. Rule 12 [a] and 32 [a].
2/ For use on correspondence and motions only.

Docket as of June 03, 2010 1:46 am Page 2

		INDIV DISPOSED
Local 74 SEIU		
Defendant		
Nassau County Division Civil Service Commission of New York Defendant		
Valley Stream Union Free School District No. 24 Defendant-Appellee	Michelle S. Feldman Esq. (See above) [ret]	
Valley Stream Union Free School District No. 24 Board Defendant-Appellee	Michelle S. Feldman Esq. (See above) [ret]	
Kevin G. Chesney	Ruth M. Pollack Esq.	
Plaintiff-Appellant	[LD ret] Law Offices of Ruth M. Pollack	

	INDIV DISPOSED
	21 West 2nd Street, P.O. Box 120 Riverhead, NY, 119010120 631-591-3160
Lorraine Chesney Plaintiff-Appellant	Ruth M. Pollack Esq. (See above) [LD ret]
Anthony Ladevaio Defendant-Appellee	Steven C. Stern Esq. [LD ret] Sokoloff Stern LLP 355 Post Avenue, Suite 201 Westbury, NY, 11590 516-334-4500
Carole Meaney Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]
Charles Broceaur Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]
Edward M. Fale Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]

		INDIV DISPOSED
Frank Nuara Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]	
Henrietta Carbonaro Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]	
Jane Does Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]	
John Does 1 Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]	
Joseph Conrad Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]	
Lawrence Trogel Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]	
Lisa K. Conte Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]	

Docket as of June 03, 2010 1:46 am Page 5

	INDIV DISPOSED
Paul Deface Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]
Stephen Haramif Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]
Valley Stream Union Free School District No. 24 Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]
Valley Stream Union Free School District No. 24 Board Defendant-Appellee	Steven C. Stern Esq. (See above) [LD ret]

Docket as of June 03, 2010 1:46 am Page 6

		INDIV DISPOSED
4/29/09	Copy of notice of appeal and district court docket entries on behalf of APPELLANTS Kevin Chesney, Lorraine Chesney, filed. [Entry date May 5 2009] [GW]	
4/29/09	Copy of district court memorandum & order dated 3/31/09 RECEIVED. [Entry date May 5 2009] [GW]	

4/29/09	Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court). [Entry date May 5 2009] [GW]
4/30/09	Copy of receipt re: payment of docketing fee filed on behalf of APPELLANTS Kevin Chesney, Lorraine Chesney, <Receipt #029702 [Entry date May 6 2009] [GW]
4/30/09	1st Supplemental Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court). [Entry date May 6 2009] [GW]
5/18/09	2nd Supplemental Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court). [Entry date May 19 2009] [GW]
5/18/09	ACKNOWLEDGMENT and NOTICE OF APPEARANCE FORM from Atty Ruth Pollack, on behalf of Kevin and Lorraine Chesney, FILED. (Orig in acco, copy to Admissions Dept.). [Entry date May 19 2009] [GW]
5/27/09	3rd Supplemental Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court). (Amended Notice of Appeal) [Entry date May 29 2009] [GW]
7/6/09	APPELLANTS Kevin Chesney, Lorraine Chesney, Form C filed, with proof of service. [Entry date Jul 9 2009] [GW]

7/6/09 APPELLANTS Kevin Chesney, Lorraine Chesney, Form D filed, with proof of service. [Entry date Jul 9 2009] [GW]

8/3/09 Appellant Kevin Chesney, Appellant Lorraine Chesney motion for order to sequester court file of EDNY filed with proof of service. [Entry date Aug 4 2009] [GW]

8/20/09 ORDER FILED: We are informed that the

Docket as of June 03, 2010 1:46 am Page 7

INDIV

DISPOSED

Appellants' district court motion for reconsideration of the judgment dismissing their action remains pending. Since that motion is governed by Federal Rule of Appellate Procedure 4(a)(4), the notices of appeal which led to the docketing of the present appeal are not yet effective, and will become effective only upon entry of the district court's order disposing of the pending motion. See Fed. R. App. P. 4(a)(4)(B)(i) (stating that a notice of appeal "becomes effective to appeal a judgment or order . . . when the order disposing of [a motion listed in Rule 4(a)(4)(A)] is entered"). Thus, proceedings in this appeal are stayed, by operation of Rule 4(a)(4), pending resolution of the Appellants' motion for reconsideration by the district court. The Appellants must notify this Court of the district court's decision on that motion within thirty days of the entry of that decision on the district court's docket.

Furthermore, the representation of the Appellants requires clarification: Appellant Kevin G. Chesney is represented by Ruth M. Pollack, while Appellant Lorraine Chesney is proceeding pro se.

Present:

José A. Cabranes,
Robert D. Sack,
Richard C. Wesley,
Circuit Judges. [Entry date Aug 20 2009] [GW]

8/20/09 Notice to counsel: Order dated 8/20/09 [Entry date Aug 20 2009] [GW]

9/25/09 Appellant Kevin Chesney, Appellant Lorraine Chesney motion for death knell sanctions and related relief filed with proof of service. [Entry date Sep 25 2009] [GW]

9/28/09 Papers clarifying that Ruth Pollack represents both Kevin Chesney and Lorraine Chesney received. [Entry date Sep 30 2009] [GW]

10/5/09 Papers received informing the court of concerns the appellants have about this appeal. [Entry date Oct 6 2009] [LR]

10/8/09 Affirmation in opposition to plaintiff Kevin Chesney`s motion for death knell judgment and other relief filed with proof of service. [Entry date Oct 9 2009] [YL]

10/16/09 Appellee Valley Stream Union Free School District No. 24 Board of Education, Appellee Valley Stream Union Free School

INDIV

DISPOSED

District No. 24, Affirmation in opposition to motion for death knell sanctions filed with proof of service. [Entry date Oct 22 2009] [GW]

10/19/09 Appellant Lorraine Chesney, Appellant Kevin Chesney, Affidavit in Reply in support of the motion for death knell sanctions filed with proof of service. [Entry date Oct 22 2009] [GW]

10/30/09 ACKNOWLEDGMENT and NOTICE OF APPEARANCE FORM from Atty Michelle Feldman, on behalf of Valley Stream Union Free School District and other District Defendants, FILED. (Orig in acco, copy to Admissions Dept.). [Entry date Nov 2 2009] [GW]

10/30/09 Appellant Kevin Chesney, Appellant Lorraine Chesney motion to strike all submissions by Lamb & Barnosky LLP filed with proof of service. [Entry date Oct 30 2009] [GW]

11/5/09 Appellant Kevin Chesney, Appellant Lorraine Chesney motion for stay of appeal and decisions on outstanding motions filed with proof of service. [Entry date Nov 6 2009] [GW]

11/9/09 ORDER FILED: IT IS HEREBY ORDERED that the motion by Appellants to stay the appeal and for a conference with

sitting judges is DEFERRED to the panel that will determine the other pending motions. Endorsed by J. Fallek. [Entry date Nov 9 2009] [GW]

11/12/09 Appellee Charles Broceaur, Appellee Henrietta Carbonaro, Appellee Joseph Conrad, Appellee Lisa Conte, Appellee Paul DePace, Appellee Edward Fale, Appellee Stephen Haramif, Appellee Anthony Ladevaio, Appellee Carole Meaney, Appellee Frank Nuara, Appellee Lawrence Trogel, Appellee Valley Stream Union Free School District No. 24 Board of Education, Appellee Valley Stream Union Free School District No. 24, affirmation in opposition to motion to strike document filed with proof of service. [Entry date Nov 16 2009] [GW]

11/16/09 Letter received W Attachments and newly discovered material from Ruth Pollack, to be associated with motions that were filed by the Appellants. [Entry date Nov 18 2009] [GW]

11/20/09 Certificate of Service RECEIVED from Ruth M. Pollack in regards to the letter filed on 11/16/09. [Entry date Nov 23 2009] [GW]

11/23/09 Affidavit in further support of Letter dated 11/16/09 notifying the court of NY state audit report on Valley Stream UFSD 24 from

INDIV

DISPOSED

APPELLANT Kevin Chesney, Lorraine Chesney, received. [Entry date Nov 23 2009] [GW]

11/23/09 Appellee Valley Stream Union Free School District No. 24 Board of Education, Appellee Valley Stream Union Free School District No. 24, affirmation in opposition to motion for stay of appeal and other relief filed with proof of service. [Entry date Nov 23 2009] [GW]

1/8/10 Order filed stating: Counsel for Appellants Kevin and Lorraine Chesney moves for a default judgment and "death knell" sanctions, arguing that Appellees failed to timely respond to their August 2009 motion seeking "immediate sequestration" of the district court record. Appellants further request that this Court disqualify opposing counsel and appoint an independent federal prosecutor, alleging, inter alia, destruction of the case file, tampering with official documents, and improper ex parte communications between opposing counsel and the district court. Appellants also move to stay these proceedings pending the results of the proposed criminal probe. Appellees oppose Appellants' motions and seek dismissal of this appeal.

Upon due consideration, it is hereby ORDERED that Appellants' motions are DENIED. Appellants have made no showing that any spoliation or tampering with the record occurred. Should Appellants wish to present additional arguments concerning the state of the record, those contentions should be addressed in their appellate briefs and not in any further motions. Finally, the representation of the Appellants requires clarification. Thus far, Appellant Kevin Chesney has been represented on appeal by Ruth M. Pollack. In light of Lorraine Chesney's affidavit affirming that she, too, wants Ms. Pollack to represent her, both Appellants are now proceeding with Ms. Pollack as counsel of record. Accordingly, Appellants are ORDERED to file their opening brief within thirty days of this order, after which the appeal will be calendared for oral argument in the normal course. (RCW by FP) [Entry date Jan 8 2010] [JK]

1/8/10 Notice to counsel re: order filed 1-8-10. [Entry date Jan 8 2010] [JK]

1/8/10 Order FILED DENYING motion by Appellant Kevin Chesney, Appellant Lorraine Chesney, endorsed on motion dated 11/5/2009. (See order filed 1-8-10) [Entry date Jan 8 2010] [JK]

Docket as of June 03, 2010 1:46 am Page 10

INDIV

DISPOSED

1/8/10 Order FILED DENYING motion by Appellant [DB]

Docket as of June 03, 2010 1:46 am Page 11

INDIV

DISPOSED

2/25/10 ORDER, denying the Appellants motion to stay the appeal and for other relief, by JAC, FILED. [Entry date Feb 25 2010] [DB]

3/30/10 LETTER, dated 03/29/2010, indicating that "not one element of the record on appeal exists, to wit: there is no file, no official electronic docket and no materials . . . there can be no appeal in this case," RECEIVED. [Entry date Mar 31 2010] [DB]

4/14/10 NOTICE TO COUNSEL, MOTION FOR SUA SPONTE DISMISSAL on the substantive motions calendar for Tuesday, May 4, 2010 **ON SUBMISSION**. [Entry date Apr 14 2010] [MR]

5/5/10 ORDER, dismissing the appeal by JON. JMW. GEL. FILED. [Entry date May 5 2010] [AS]

5/5/10 Notice to counsel regarding court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/5/10 The new case manager assigned to this case is: Steglich, Anna. [Entry date May 5 2010] [AS]

5/5/10 This appeal is disposed by the order: court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/21/10 MOTION, for reconsideration, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Jun 2 2010] [AS]

Docket as of June 03, 2010 1:46 am Page 12

PACER Service Center			
Transaction Receipt			
06/03/2010 04:41:36			
PACER Login:	kc2524	**Client Code:**	
Description:	dkt report	**Case Number:**	09-1824

TRANSMITTED. [Entry date Feb 25 2010] [DB]

Docket as of June 04, 2010 1:53 am Page 11

INDIV

DISPOSED

2/25/10 ORDER, denying the Appellants motion to stay the appeal and for other relief, by JAC, FILED. [Entry date Feb 25 2010] [DB]

3/30/10 LETTER, dated 03/29/2010, indicating that "not one element of the record on appeal exists, to wit: there is no file, no

official electronic docket and no materials . . . there can be no appeal in this case," RECEIVED. [Entry date Mar 31 2010] [DB]

4/14/10 NOTICE TO COUNSEL, MOTION FOR SUA SPONTE DISMISSAL on the substantive motions calendar for Tuesday, May 4, 2010 **ON SUBMISSION**. [Entry date Apr 14 2010] [MR]

5/5/10 ORDER, dismissing the appeal by JON. JMW. GEL. FILED. [Entry date May 5 2010] [AS]

5/5/10 Notice to counsel regarding court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/5/10 The new case manager assigned to this case is: Steglich, Anna. [Entry date May 5 2010] [AS]

5/5/10 This appeal is disposed by the order: court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/21/10 MOTION, for reconsideration, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Jun 2 2010] [AS]

Docket as of June 04, 2010 1:53 am Page 12

PACER Service Center			
Transaction Receipt			
06/04/2010 13:54:05			
PACER Login:	kc2524	**Client Code:**	
Description:	dkt report	**Case Number:**	09-1824

TRANSMITTED. [Entry date Feb 25 2010] [DB]

Docket as of June 04, 2010 1:53 am Page 11

INDIV

DISPOSED

2/25/10 ORDER, denying the Appellant's motion to stay the appeal and for other relief, by JAC, FILED. [Entry date Feb 25 2010] [DB]

3/30/10 LETTER, dated 03/29/2010, indicating that "not one element of the record on appeal exists, to wit: there is no file, no official electronic docket and no materials . . . there can be no appeal in this case," RECEIVED. [Entry date Mar 31 2010] [DB]

4/14/10 NOTICE TO COUNSEL, MOTION FOR SUA SPONTE DISMISSAL on the substantive motions calendar for Tuesday, May 4, 2010 **ON SUBMISSION**. [Entry date Apr 14 2010] [MR]

5/5/10 ORDER, dismissing the appeal by JON. JMW. GEL. FILED. [Entry date May 5 2010] [AS]

5/5/10 Notice to counsel regarding court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/5/10 The new case manager assigned to this case is: Steglich, Anna. [Entry date May 5 2010] [AS]

5/5/10 This appeal is disposed by the order: court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/21/10 MOTION, for reconsideration, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Jun 2 2010] [AS]

Docket as of June 04, 2010 1:53 am Page 12

PACER Service Center			
Transaction Receipt			
06/07/2010 23:23:50			
PACER Login:	kc2524	**Client Code:**	
Description:	dkt report	**Case Number:**	09-1824

TRANSMITTED. [Entry date Feb 25 2010] [DB]

Docket as of June 04, 2010 1:53 am Page 11

INDIV

DISPOSED

2/25/10 ORDER, denying the Appellants motion to stay the appeal and for other relief, by

JAC, FILED. [Entry date Feb 25 2010] [DB]

3/30/10 LETTER, dated 03/29/2010, indicating that "not one element of the record on appeal exists, to wit: there is no file, no official electronic docket and no materials . . . there can be no appeal in this case," RECEIVED. [Entry date Mar 31 2010] [DB]

4/14/10 NOTICE TO COUNSEL, MOTION FOR SUA SPONTE DISMISSAL on the substantive motions calendar for Tuesday, May 4, 2010 **ON SUBMISSION**. [Entry date Apr 14 2010] [MR]

5/5/10 ORDER, dismissing the appeal by JON. JMW. GEL. FILED. [Entry date May 5 2010] [AS]

5/5/10 Notice to counsel regarding court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/5/10 The new case manager assigned to this case is: Steglich, Anna. [Entry date May 5 2010] [AS]

5/5/10 This appeal is disposed by the order: court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/21/10 MOTION, for reconsideration, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Jun 2 2010] [AS]

PACER Service Center			
Transaction Receipt			
06/11/2010 15:48:02			
PACER Login:	kc2524	**Client Code:**	
Description:	dkt report	**Case Number:**	09-1824

TRANSMITTED. [Entry date Feb 25 2010] [DB]

Docket as of June 04, 2010 1:53 am Page 11

INDIV

DISPOSED

2/25/10 ORDER, denying the Appellant's motion to stay the appeal and for other relief, by JAC, FILED. [Entry date Feb 25 2010] [DB]

3/30/10 LETTER, dated 03/29/2010, indicating that "not one element of the record on appeal exists, to wit: there is no file, no official electronic docket and no materials . . . there can be no appeal in this case," RECEIVED. [Entry date Mar 31 2010] [DB]

4/14/10 NOTICE TO COUNSEL, MOTION FOR SUA SPONTE DISMISSAL on the substantive motions calendar for Tuesday, May 4, 2010 **ON SUBMISSION**. [Entry date Apr 14 2010] [MR]

5/5/10 ORDER, dismissing the appeal by JON. JMW. GEL. FILED. [Entry date May 5 2010] [AS]

5/5/10 Notice to counsel regarding court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/5/10 The new case manager assigned to this case is: Steglich, Anna. [Entry date May 5 2010] [AS]

5/5/10 This appeal is disposed by the order: court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/21/10 MOTION, for reconsideration, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Jun 2 2010] [AS]

Docket as of June 04, 2010 1:53 am Page 12

PACER Service Center			
Transaction Receipt			
06/17/2010 15:32:42			
PACER Login:	kc2524	**Client Code:**	
Description:	dkt report	**Case Number:**	09-1824

TRANSMITTED. [Entry date Feb 25 2010] [DB]

Docket as of June 24, 2010 3:41 pm Page 11

INDIV

CLOSED

2/25/10 ORDER, denying the Appellants motion to stay the appeal and for other relief, by JAC, FILED. [Entry date Feb 25 2010] [DB]

3/30/10	LETTER, dated 03/29/2010, indicating that "not one element of the record on appeal exists, to wit: there is no file, no official electronic docket and no materials . . . there can be no appeal in this case," RECEIVED. [Entry date Mar 31 2010] [DB]
4/14/10	NOTICE TO COUNSEL, MOTION FOR SUA SPONTE DISMISSAL on the substantive motions calendar for Tuesday, May 4, 2010 **ON SUBMISSION**. [Entry date Apr 14 2010] [MR]
5/5/10	ORDER, dismissing the appeal by JON. JMW. GEL. FILED. [Entry date May 5 2010] [AS]
5/5/10	Notice to counsel regarding court order dated 5/5/10 [Entry date May 5 2010] [AS]
5/5/10	The new case manager assigned to this case is: Steglich, Anna. [Entry date May 5 2010] [AS]
5/5/10	This appeal is disposed by the order: court order dated 5/5/10 [Entry date May 5 2010] [AS]
5/21/10	MOTION, for reconsideration, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Jun 2 2010] [AS]
6/8/10	Notice to counsel re: Order dated 06/08/10. [Entry date Jun 8 2010] [CI]
6/8/10	ORDER, Denying motion for reconsideration of decision by Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED [Entry date Jun 8 2010] [CI]

6/10/10 Certified copy of order dated 05/05/2010 disposing of the appeal issued to district court. [Mandate] [Entry date Jun 10 2010] [AG]

6/10/10 Notice to counsel in re: Mandate issued. [Entry date Jun 10 2010] [AG]

Docket as of June 24, 2010 3:41 pm Page 12

PACER Service Center			
Transaction Receipt			
06/25/2010 15:47:20			
PACER Login:	kc2524	**Client Code:**	
Description:	dkt report	**Case Number:**	09-1824
Billable Pages:	11	**Cost:**	0.88

8/20/2010

USCA2 Docket Sheet for 09-1824

General Docket
US Court of Appeals for the Second Circuit

Second Circuit Court of Appeals

INDIV

CLOSED

Court of Appeals Docket #: 09-1824-cv
Nsuit: 3442 CIVIL RIGHTS-Jobs

Chesney v. Valley Stream Union Free School District No. 24 Filed 4/29/09

Appeal from: EDNY (CENTRAL ISLIP)

Case type information:

Civil

Private

None

Lower court information:

District:	05-cv-5106
Trial Judge:	Denis R. Hurley
MagJudge:	E. Thomas Boyle
Date Filed:	11/01/05
Date order/judgement:	3/31/2009
Date NOA filed:	4/28/2009

Fee status: Paid

Panel Assignment:

Panel: JON JMW GEL 500 Pearl

Date of decision: 5/5/10

Prior cases: NONE

Current cases NONE

Official Caption 1/

INDIV
CLOSED

Docket No. [s] : 09-1824 -cv

Kevin G. Chesney, Lorraine Chesney,

Plaintiffs-Appellants,

v.

Valley Stream Union Free School District No. 24, Valley Stream Union Free School District No. 24, Edward M. Fale, Ph.D., Superintendent of Schools, in his individual and official capacity, Lisa K. Conte, Principal, Charles Broceaur, Maintenance Supervisor, in his individual and official capacity, Stephen Haramif, Custodian and Union Representative, John Does, Jane Does, the latter being personal and/or entities unknown to complainant, Joseph Conrad, President, Carole Meaney, Vice President, Henrietta Carbonaro, Paul DePace, Anthony Ladevaio, Frank Nuara, Lawrence Trogel, each in its individual and official capacity,

Defendants-Appellees.

Local 74 SEIU, Nassau County Division Civil Service Commission,

Defendants.

Authorized Abbreviated Caption 2/

Docket No. [s] : 09-1824 -cv

Chesney v. Valley Stream Union Free School District No. 24

1/ Fed. R. App. P. Rule 12 [a] and 32 [a].
2/ For use on correspondence and motions only.

Docket as of August 12, 2010 1:52 am Page 2

INDIV

CLOSED

Local 74 SEIU Defendant	
Nassau County Division Civil Service Commission of New York Defendant	
Valley Stream Union Free School District No. 24 Defendant-Appellee	Michelle S. Feldman Esq. (See above) [ret]
Valley Stream Union Free School District No. 24 Board Defendant-Appellee	Michelle S. Feldman Esq. (See above) [ret]

Kevin G. Chesney	Ruth M. Pollack Esq.
Plaintiff-Appellant	[LD ret] Law Offices of Ruth M. Pollack

Docket as of August 12, 2010 1:52 am Page 3

	INDIV
	CLOSED
	21 West 2nd Street, P.O. Box 120 Riverhead, NY, 119010120
	631-591-3160
Lorraine Chesney	Ruth M. Pollack Esq. (See above)
Plaintiff-Appellant	[LD ret]
Anthony Ladevaio	Steven C. Stern Esq.
Defendant-Appellee	[LD ret] Sokoloff Stern LLP
	355 Post Avenue, Suite 201 Westbury, NY, 11590
	516-334-4500
Carole Meaney	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Charles Broceaur	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]

Edward M. Fale	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]

Docket as of August 12, 2010 1:52 am Page 4

INDIV

CLOSED

Frank Nuara	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Henrietta Carbonaro	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Jane Does	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
John Does 1	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Joseph Conrad	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Lawrence Trogel	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Lisa K. Conte	Steven C. Stern Esq. (See above)

Docket as of August 12, 2010 1:52 am Page 5

INDIV

CLOSED

Defendant-Appellee	[LD ret]
Paul DePace	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Stephen Haramif	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Valley Stream Union Free School District No. 24	Steven C. Stern Esq. (See above)
Defendant-Appellee	[LD ret]
Valley Stream Union Free School District No. 24	Steven C. Stern Esq. (See above)

Docket as of August 12, 2010 1:52 am Page 6

INDIV

CLOSED

4/29/09	Copy of notice of appeal and district court docket entries on behalf of APPELLANTS Kevin Chesney, Lorraine Chesney, filed. [Entry date May 5 2009] [GW]
4/29/09	Copy of district court memorandum & order dated 3/31/09 RECEIVED. [Entry date May 5 2009] [GW]
4/29/09	Index in lieu of Record on Appeals Electronically Filed (Original documents remain in

the originating court). [Entry date May 5 2009] [GW]

4/30/09 Copy of receipt re: payment of docketing fee filed on behalf of APPELLANTS Kevin Chesney, Lorraine Chesney, <Receipt #029702 [Entry date May 6 2009] [GW]

4/30/09 1st Supplemental Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court) [Entry date May 6 2009] [GW]

5/18/09 2nd Supplemental Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court). [Entry date May 19 2009] [GW]

5/18/09 ACKNOWLEDGMENT and NOTICE OF APPEARANCE FORM from Atty Ruth Pollack, on behalf of Kevin and Lorraine Chesney, FILED. (Orig in acco, copy to Admissions Dept.). [Entry date May 19 2009] [GW]

5/27/09 3rd Supplemental Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court). (Amended Notice of Appeal) [Entry date May 29 2009] [GW]

7/6/09 APPELLANTS Kevin Chesney, Lorraine Chesney, Form C filed, with proof of service. [Entry date Jul 9 2009] [GW]

7/6/09 APPELLANTS Kevin Chesney, Lorraine Chesney, Form D filed, with proof of service. [Entry date Jul 9 2009] [GW]

8/3/09 Appellant Kevin Chesney, Appellant Lorraine Chesney motion for order to sequester court file of EDNY filed with proof of service. [Entry date Aug 4 2009] [GW]

8/20/09 ORDER FILED: We are informed that the

Docket as of August 12, 2010 1:52 am Page 7

INDIV

CLOSED

Appellants' district court motion for reconsideration of the judgment dismissing their action remains pending. Since that motion is governed by Federal Rule of Appellate Procedure 4(a)(4), the notices of appeal which led to the docketing of the present appeal are not yet effective, and will become effective only upon entry of the district court's order disposing of the pending motion. See Fed. R. App. P. 4(a)(4)(B)(i) (stating that a notice of appeal "becomes effective to appeal a judgment or order . . . when the order disposing of [a motion listed in Rule 4(a)(4)(A)] is entered"). Thus, proceedings in this appeal are stayed, by operation of Rule 4(a)(4), pending resolution of the Appellants' motion for reconsideration by the district court. The Appellants must notify this Court of the district court's decision on that motion within thirty days of the entry of that decision on the district court's docket.

Furthermore, the representation of the Appellants requires clarification: Appellant

Kevin G. Chesney is represented by Ruth M. Pollack, while Appellant Lorraine Chesney is proceeding pro se.

Present:
Jose A. Cabranes,
Robert D. Sack,
Richard C. Wesley,
Circuit Judges. [Entry date Aug 20 2009] [GW]

8/20/09 Notice to counsel: Order dated 8/20/09 [Entry date Aug 20 2009] [GW]

9/25/09 Appellant Kevin Chesney, Appellant Lorraine Chesney motion for death knell sanctions and related relief filed with proof of service. [Entry date Sep 25 2009] [GW]

9/28/09 Papers clarifying that Ruth Pollack represents both Kevin Chesney and Lorraine Chesney received. [Entry date Sep 30 2009] [GW]

10/5/09 Papers received informing the court of concerns the appellants have about this appeal. [Entry date Oct 6 2009] [LR]

10/8/09 Affirmation in opposition to plaintiff Kevin Chesney's motion for death knell judgment and other relief filed with proof of service. [Entry date Oct 9 2009] [YL]

10/16/09 Appellee Valley Stream Union Free School District No. 24 Board of Education, Appellee Valley Stream Union Free School

INDIV

CLOSED

District No. 24, Affirmation in opposition to motion for death knell sanctions filed with proof of service. [Entry date Oct 22 2009] [GW]

10/19/09 Appellant Lorraine Chesney, Appellant Kevin Chesney, Affidavit in Reply in support of the motion for death knell sanctions filed with proof of service. [Entry date Oct 22 2009] [GW]

10/30/09 ACKNOWLEDGMENT and NOTICE OF APPEARANCE FORM from Atty Michelle Feldman, on behalf of Valley Stream Union Free School District and other District Defendants, FILED. (Orig in acco, copy to Admissions Dept.). [Entry date Nov 2 2009] [GW]

10/30/09 Appellant Kevin Chesney, Appellant Lorraine Chesney motion to strike all submissions by Lamb & Barnosky LLP filed with proof of service. [Entry date Oct 30 2009] [GW]

11/5/09 Appellant Kevin Chesney, Appellant Lorraine Chesney motion for stay of appeal and decisions on outstanding motions filed with proof of service. [Entry date Nov 6 2009] [GW]

11/9/09 ORDER FILED: IT IS HEREBY ORDERED that the motion by Appellants to stay the

appeal and for a conference with sitting judges is DEFERRED to the panel that will determine the other pending motions. Endorsed by J. Fallek. [Entry date Nov 9 2009] [GW]

11/12/09 Appellee Charles Broceaur, Appellee Henrietta Carbonaro, Appellee Joseph Conrad, Appellee Lisa Conte, Appellee Paul DePace, Appellee Edward Fale, Appellee Stephen Haramif, Appellee Anthony Ladevaio, Appellee Carole Meaney, Appellee Frank Nuara, Appellee Lawrence Trogel, Appellee Valley Stream Union Free School District No. 24 Board of Education, Appellee Valley Stream Union Free School District No. 24, affirmation in opposition to motion to strike document filed with proof of service. [Entry date Nov 16 2009] [GW]

11/16/09 Letter received W' Attachments and newly discovered material from Ruth Pollack, to be associated with motions that were filed by the Appellants. [Entry date Nov 18 2009] [GW]

11/20/09 Certificate of Service RECEIVED from Ruth M. Pollack in regards to the letter filed on 11/16/09. [Entry date Nov 23 2009] [GW]

11/23/09 Affidavit in further support of Letter dated 11/16/09 notifying the court of NY state audit report on Valley Stream UFSD 24 from

INDIV

CLOSED

APPELLANT Kevin Chesney, Lorraine Chesney, received. [Entry date Nov 23 2009] [GW]

11/23/09 Appellee Valley Stream Union Free School District No. 24 Board of Education, Appellee Valley Stream Union Free School District No. 24, affirmation in opposition to motion for stay of appeal and other relief filed with proof of service. [Entry date Nov 23 2009] [GW]

1/8/10 Order filed stating: Counsel for Appellants Kevin and Lorraine Chesney moves for a default judgment and "death knell" sanctions, arguing that Appellees failed to timely respond to their August 2009 motion seeking "immediate sequestration" of the district court record. Appellants further request that this Court disqualify opposing counsel and appoint an independent federal prosecutor, alleging, inter alia, destruction of the case file, tampering with official documents, and improper ex parte communications between opposing counsel and the district court. Appellants also move to stay these proceedings pending the results of the proposed criminal probe. Appellees oppose Appellants' motions and seek dismissal of this appeal.

Upon due consideration, it is hereby ORDERED that Appellants' motions are DENIED. Appellants have made no showing that any spoliation or tampering with the record occurred. Should Appellants wish to present additional arguments concerning the state of the record, those contentions should be addressed in their appellate briefs and not in any further motions. Finally, the representation of the Appellants requires clarification. Thus far, Appellant Kevin Chesney has been represented on appeal by Ruth M. Pollack. In light of Lorraine Chesney's affidavit affirming that she, too, wants Ms. Pollack to represent her, both Appellants are now proceeding with Ms. Pollack as counsel of record. Accordingly, Appellants are ORDERED to file their opening brief within thirty days of this order, after which the appeal will be calendared for oral argument in the normal course. (RCW by FP) [Entry date Jan 8 2010] [JK]

1/8/10 Notice to counsel re: order filed 1-8-10. [Entry date Jan 8 2010] [JK]

1/8/10 Order FILED DENYING motion by Appellant Kevin Chesney, Appellant Lorraine Chesney, endorsed on motion dated 11/5/2009. (See order filed 1-8-10) [Entry date Jan 8 2010] [JK]

INDIV

CLOSED

1/8/10	Order FILED DENYING motion by Appellant Kevin Chesney, Appellant Lorraine Chesney, endorsed on motion dated 11/5/2009. (See order filed 1-8-10) [Entry date Jan 8 2010] [JK]
1/8/10	Order FILED DENYING motion by Appellant Kevin Chesney, Appellant Lorraine Chesney, endorsed on motion dated 11/5/2009. (See order filed 1-8-10) [Entry date Jan 8 2010] [JK]
1/8/10	Order FILED DENYING motion by Appellant Kevin Chesney, Appellant Lorraine Chesney, endorsed on motion dated 11/5/2009. (See order filed 1-8-10) [Entry date Jan 8 2010] [JK]
1/11/10	The new case manager assigned to this case is: Greenidge, Anna. [Entry date Jan 11 2010] [AG]
2/2/10	The new case manager assigned to this case is: Martin, Angela. [Entry date Feb 2 2010] [AM]
2/4/10	The new case manager assigned to this case is: Beesley, Dylan. [Entry date Feb 4 2010] [AM]
2/4/10	MOTION, for a stay pending resolution of the anticipated filings of a Petition for Writ of Mandamus and a Petition for Writ of

Certiorari with the United States Supreme Court, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Feb 4 2010] [DB]

2/5/10 NOTICE TO COUNSEL, Order filed 02/05/2010, TRANSMITTED. [Entry date Feb 5 2010] [DB]

2/5/10 ORDER, denying Appellants' motion to stay the appeal pending resolution of the anticipated filings of a petition for writ of mandamus and petition for writ of certiorari, before RR, FILED. [Entry date Feb 5 2010] [DB]

2/19/10 MOTION; for a stay of the appeal, for "proper processing of this form," and for a criminal investigation of alleged tampering with the district court record, on behalf of Appellants Kevin Chesney and Lorraine Chesney, FILED. [Entry date Feb 19 2010] [DB]

2/25/10 NOTICE TO COUNSEL, Order filed 02/25/2010, TRANSMITTED. [Entry date Feb 25 2010] [DB]

Docket as of August 12, 2010 1:52 am Page 11

INDIV

CLOSED

2/25/10 ORDER, denying the Appellant's motion to stay the appeal and for other relief, by JAC, FILED. [Entry date Feb 25 2010] [DB]

3/30/10 LETTER, dated 03/29/2010, indicating that "not one element of the record on appeal

exists, to wit: there is no file, no official electronic docket and no materials . . . there can be no appeal in this case," RECEIVED. [Entry date Mar 31 2010] [DB]

4/14/10 NOTICE TO COUNSEL, MOTION FOR SUA SPONTE DISMISSAL on the substantive motions calendar for Tuesday, May 4, 2010 **ON SUBMISSION**. [Entry date Apr 14 2010] [MR]

5/5/10 ORDER, dismissing the appeal by JON. JMW. GEL. FILED. [Entry date May 5 2010] [AS]

5/5/10 Notice to counsel regarding court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/5/10 The new case manager assigned to this case is: Steglich, Anna. [Entry date May 5 2010] [AS]

5/5/10 This appeal is disposed by the order: court order dated 5/5/10 [Entry date May 5 2010] [AS]

5/21/10 MOTION, for reconsideration, on behalf of Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED. [Entry date Jun 2 2010] [AS]

6/8/10 Notice to counsel re: Order dated 06/08/10. [Entry date Jun 8 2010] [CI]

6/8/10 ORDER, Denying motion for reconsideration of decision by Appellant Kevin Chesney, Appellant Lorraine Chesney, FILED [Entry date Jun 8 2010] [CI]

6/10/10 Certified copy of order dated 05/05/2010 disposing of the appeal issued to district court. [Mandate] [Entry date Jun 10 2010] [AG]

6/10/10 Notice to counsel in re: Mandate issued. [Entry date Jun 10 2010] [AG]

7/23/10 PETITIONERS NOTICE OF MOTION FOR EXTENSION OF TIME to the Supreme Court of the United States, dated 8/2/2010, on behalf

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INDIV

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APPELLANT Kevin Chesney, Lorraine Chesney, RECEIVED. [Entry date Aug 11 2010] [AS]

8/4/10 Notice from Supreme Court granting extension of time in which to file a writ of certiorari. [Entry date Aug 5 2010] [CI]

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